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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~264~~ 27

BENJAMIN F. BUZARD AND MOSES HILLARD,
APPELLANTS,

vs.

ROBERT A. HOUSTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED AUGUST 27, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884

No. 556.

BENJAMIN F. BUZARD AND MOSES HILLARD, APPELLANTS,

vs.

ROBERT A. HOUSTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

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a THE STATE OF TEXAS, *Bexar County:*

Be it remembered that at a term of the circuit court of the United States for the western district of Texas, begun and holden at San Antonio on the sixth day of October, 1883, the following cause came on to be heard, to wit:

BENJAMIN F. BUZARD & MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON, Defendant in Equity. } No. 9.

1 To the judges of the circuit court of the United States for the western district of Texas, sitting at San Antonio:

Benjamin F. Buzard and Moses Hillard, citizens of the State of Missouri, bring this their bill against Robert A. Houston, a citizen of the state of Texas.

And thereupon your orators say that they are citizens of the State of Missouri, and that the defendant is a citizen of the State of Texas, residing in the county of Gonzales, within your honor's jurisdiction.

And your orators show that they are partners for the purpose of purchasing and raising cattle in the State of Texas; that they have a large tract of land in the county of Zavalla in said State, on the Nueces river, now being fenced and prepared for a pasture, within which it is their intention to pasture and raise cattle; that they have been, within the past few months, making purchases of cattle, and especially cows and bulls, for the purpose of placing them within said pasture; and that they are anxious to obtain male and female cattle sufficient to stock the same, amounting to several thou-
2 sand head, all of which was well known to the defendant.

That for the purpose of stocking the said pasture with male and female cattle, your orator, the said Benjamin F. Buzard, for and in behalf of himself and his partner, your orator, Moses Hillard, negotiated a purchase of cattle from the defendant on or about the fourteenth of October, 1881, at the city of San Antonio, in Texas, on the terms substantially as follows:

Received this day of B. F. Buzard the sum of five hundred dollars in part payment of fifteen hundred and fifty head of cattle; said cattle are to be cows and bulls.

B. F. Buzzard agrees to pay R. A. Houston one-half the price of the cattle at the time of signing the contract.

R. A. Houston agrees to contract and sell to Buzard fifteen hundred head of good, smooth cows, from three to eight years years old, and fifty bulls.

The cattle are to be delivered at Lampasas between the first and tenth of May, 1882.

The balance of the cost of the cattle to be paid at the time of delivery.

The price of cattle is to be fifteen and a half dollars per head.

The aforesaid memorandum was intended as the basis of a
3 more formal contract, embracing the same subject-matter to be thereafter executed between your orators and the said de-

fendant, and though only signed by your orator the said Buzard and the defendant, was known by the said defendant to be made by the said Buzard for the benefit of the partnership of Buzard and Hillard aforesaid.

The said contract was witnessed by D. W. Hinkle and another person, whose name is not now remembered; and, by the agreement of the complainant Buzard and the defendant Houston, the same was placed in the hands of D. W. Hinkle, to be kept by him for the mutual benefit of your orator and the said defendant. At the time of making the said contract complainants, by your orator Buzard, paid to the said defendant five hundred dollars as part performance of the same, and he was ready and willing to carry out the entire contract by the payment of one-half the price mentioned in said contract for said cattle to the defendant, and the entering into such other obligations as were necessary to carry out the same fully, according to the terms thereof. But at the request of the defendant, the time for entering into a more formal contract, embracing
4 said subject, and the payment by your orator of the remainder of the money to be due said defendant upon the said contract was postponed for a few days, and until about the 18th October, 1881.

And your orators aver that upon the day and at the time and place agreed upon between the said Buzard & Houston for their meeting and completing the said contract, your orator, the said Buzard, for and in behalf of your orators, was ready to perform all acts on the part of your orators necessary to carry the said contract into full execution; but the said Houston, for the cause of alleged sickness at that time, did not appear, but it was arranged between the defendant, through his messenger, that another day should be set for completing the contract.

And your orators show that afterwards, on the 31st October, 1881, at San Antonio, Texas, negotiations were renewed between your orators, through the said Buzard, and the defendant, for the purpose of closing and completing the said contract, when the said defendant proposed to the said Buzard that in lieu of said contract with him for the cows and bulls mentioned in the said memorandum in the hands of D. W. Hinkle, the said Buzard should take from him, the said defendant, an assignment of a contract which he,
5 the defendant, on the 13th of August, 1881, had made with one L. A. Mosty, of Lampasas county, in the State of Texas, for the delivery of cattle in Lampasas county aforesaid, which contract, in quantity and quality and number and kind, was substantially similar to that proposed in said memorandum made by the defendant with your orators, and in which the cattle were to be delivered in six miles of Lampasas from the first to the fifteenth of May, 1881, upon which said contract the said defendant alleged that he had advanced to the said Mosty fifteen thousand dollars, and had in all things complied with the same, so as to entitle himself to a performance thereof by the said Mosty; which said contract is here set out in words and figures as follows:

DODGE CITY, FORD CO., KAN., *Aug.* 13, 1881.

Contract entered into this day at Dodge City, Kansas, by and between L. A. Mosty, party of the first part, and R. A. Houston, party of the second part, to wit: That L. A. Mosty, party of the first part, hereby agrees to sell and deliver unto R. A. Houston, party of the second part, fifteen hundred dry cows at fourteen dollars per
6 head, same to be good, smooth, and merchantable cows, and to range from (3) three to (8) eight years old; and, furthermore, L. A. Mosty, party of the first part, agrees to brand said cows with road brand of R. A. Houston, party of the second part, and to deliver said cows at a point 6 miles west of Lampasas, Texas. Also L. A. Mosty agrees to deliver and sell to R. A. Houston fifty (50) bulls @ ($14.00) fourteen dollars each, said bulls to be from three to (5) five years old, straight and smooth.

L. A. Mosty, party of the first part, acknowledges receipt of fifteen hundred ($1,500) dollars from R. A. Houston, party of the second part, as part payment on herein-mentioned cattle.

Furthermore, R. A. Houston, party of the second part, hereby agrees to honor the drafts which may be drawn by L. A. Mosty, party of the first part, to the amount of thirteen thousand five hundred ($13,500) dollars, interest to be computed at the rate of ten per cent. per annum. L. A. Mosty, party of the first part, hereby agrees to deliver said cattle between the first and fifteenth day of May, 1882.

It is further agreed that the balance due on said cattle shall be paid upon their delivery. In case of failure of L. A. Mosty, party
7 of the first part, to comply with the above conditions and agreement between him and R. A. Houston, L. A. Mosty hereby agrees to forfeit the sum of fifteen hundred ($1,500) dollars, same to be paid over to R. A. Houston, party of the second part.

L. A. MOSTY.
R. A. HOUSTON.

Witnesses—
J. W. ORMOND.
R. M. WRIGHT.

At the bottom of the first page of said contract the following note is written (note interlined at No. 7, at fourteen dollars per head), and opposite 3d line, 2nd page, the word cattle is written.

And the said defendant, Houston, asked that in case of the assignment by him of the said contract with said Mosty to your orators, your orators should pay to him the sum of money alleged by him to have been paid by him to the said Mosty upon the same; and he exhibited a receipt from said Mosty to him of date 19th August, dated at Denison, Texas, for the sum of five thousand dollars, and a letter from said Mosty to him, said defendant, dated Dallas, Texas, Sept. 28th, 1881, advising him, the defendant, that he, the said Mosty, had drawn on him, through Ball, Hutchings & Co., for eighty-five hundred dollars, on the day aforesaid, which draft
8 he alleges had been honored and paid; the said sums having, as he alleged, been paid by him on the said contract with said Mosty, amounting in all, with the sum acknowledged in the said contract, to fifteen thousand dollars.

And the defendant further asked that in case of his assignment of the said contract with Mosty to your orators, that he be paid the difference in the price of the cattle mentioned in the contract made by your orators with said defendant, and the price mentioned in the contract made by him with the said Mosty in addition to the money alleged to have been advanced by said Mosty.

And as an inducement to your orators the said Buzard to make the exchange of contracts, the said defendant Houston then and there represented to the said Buzard that the said Mosty was good and solvent, and able to perform his said contract; that he was better than the defendant, and that the said Mosty at that time had twelve hundred of the cattle in the rail or ranch brand of said Mosty; that there was no doubt of the performance of said contract as R. E. McAnulty was a partner with the said Mosty in the performance of the same. Of all which your orator, Buzard, nor either of your orators, know nothing, except that your orator, Buz-
9 ard, knew the said McAnulty, and knew he was a man of wealth, and fully able as well as willing to perform his obligations and contracts. And he felt satisfied that if the said McAnulty was a partner in the said transaction between the said Mosty and the said Houston, the said contract would be fully and strictly performed.

And thereupon your orator, B. F. Buzard, taking time to consider the said proposition, on the next day met the said Houston, and considering that the cattle mentioned in the said contract with the said Houston, by the said Mosty, were of peculiar value on account of them being reared in the section of country in and about Lampasas county, and on account of the representations of the said Houston in relation thereto, accepted the proposition made by the defendants, provided he, the said defendant, would guarantee the fulfilment of the said contract.

This the defendant refused to do, alleging that at that time he would be employed in other transactions and could not well attend to the completion of said contract by the said Mosty, and
10 that it would be a useless thing for him to attend to the delivery of the cattle by Mosty and then hand them over immediately at the same place to your orators.

But as a further inducement to your orator, the said Buzard, that he should take the offered assignment of the said contract with said Mosty, he, the defendant Houston, proposed that he would deduct twenty-five cents per head on the number of said cattle from the price of fifteen dollars and a half, agreed by the said Buzard for your orators to be paid in the contract between the said Houston and Buzard, and would take the obligation of your orators to pay to him at the time of the performance of the said contract by the said Mosty the sum of eighteen hundred and thirty-seven and $\frac{50}{100}$ dollars, the same being the profit on the contract with said Mosty in the sale to your orators, less the twenty-five cents per head to be deducted.

And the said defendant then and there reiterated his representations that the said Mosty was good and solvent, and able to perform

the said contract; that he was as good or better than the said defendant, and that the said Mosty had twelve hundred head in his rail or ranch brand, and that there was no doubt of the fulfil-
11 ment of the contract; and he again reiterated that the said R. E. McAnulty was a partner of the said Mosty in the transaction for the fulfilment of the said contract.

Whereupon your orators, acting through the said Buzard, knowing that the said McAnulty was a man of wealth and strict in the performance of his contracts, and believing that the said defendant was an honorable and truthful man, and believing that his representations were true as to the solvency of said Mosty, and his capacity to perform said contract, and believing all the other representations of the defendant, and especially believing that the said McAnulty was a partner with said Mosty in the delivery of the said cattle and performance of said contract with the defendant, and having ap-rised himself by inquiry among the acquaintances of the said McAnulty of his solvency and ability to perform the contract, your orators accepted the said proposition made by the defendant to pay him with the money already received by him, the fifteen thousand dollars alleged to have been paid by him to the said Mosty on said contract, and to execute their obligation to the defendant to pay him on the performance of the said contract
12 by the said Mosty an additional sum of eighteen hundred and thirty-seven $\frac{50}{100}$ dollars, and to return to him the contract he had made with your orator Buzard for the benefit of your orators. And in lieu thereof to receive from the said defendant the assignment without responsibility on him of the said contract made by him with the said Mosty.

And accordingly your orator, the said Buzard, authorized the said D. W. Hinkle, who still held the contract between the said Buzard and the defendant, Houston, to deliver the same to the said defendant, which was done, and which the said defendant still has in his possession or control. And thereupon the said Buzard, for your orators, paid to the said defendant his draft in the sum of fourteen thousand five hundred dollars on the bank of Thornton & Lockwood, at San Antonio, Texas, for the benefit of your orators, at sixteen days after date, which on the next day, on the application of the defendant, was cashed by the said bank at a discount, with consent of your orators, for the benefit of the said defendant, Houston, and the money mentioned therein was paid to him. And at the same time your orators executed to said Houston their ob-
13 ligation for eighteen hundred and thirty-seven $\frac{50}{100}$ dollars, to be paid when the said Mosty complied or fulfilled the said contract, which obligation is still in the possession of the defendant. And thereupon the said defendant, by the name of R. A. Houston, executed upon the back of the said contract between him and the said Mosty, his assignment thereof to your orators in the following words:

STATE OF TEXAS, *County of Bexar:*

Know all men by these presents that I, Robert A. Houston, party

of the 2nd part to the above and foregoing contract, for and in consideration of the sum of fifteen thousand dollars, to me in hand paid by Buzard & Hillard, being the sum advanced by myself, R. A. Houston, in payment on the said contract, and the further sum of $1,837.50 (eighteen hundred and thirty-seven dollars and fifty cents) due upon completion of the foregoing contract, do this day transfer and assign unto the said Buzard & Hillard all the right, title, and interest which I have by virtue of said foregoing contract, it being understood that no responsibility shall rest upon me in the event that L. A. Mosty, party of first part in said contract, fails to comply in any respect with the terms thereof.

14 In witness whereof, I hereunto sign my name this 1st day of November, A. D. 1881.

(Signed) R. A. HOUSTON.

Witnessed by F. G. SMITH.
I. B. LACOSTE.

Which said contract and assignment, with the receipt of the said Mosty, dated 19th August, 1881, and the letter of said Mosty, dated September 28th, 1881, to the defendant herein, before referred to as evidencing the payment of the defendant to said Mosty of the said fifteen thousand dollars, were then and there delivered to your orators.

And your orators aver that the representations of the defendant that the said Mosty was good and solvent and able to perform the said contract for the delivery of said cows and bulls, that the said Mosty was as good or better than the defendant; that the said Mosty had twelve hundred head in his rail or ranch brand, and that there was no doubt of the fulfillment of the contract, and the representation aforesaid of the defendant that R. E. McAnulty was a partner of said Mosty in the transaction of the fulfilment of said contract with defendant were at the time they were made absolutely untrue; that at the time aforesaid the said Mosty was wholly insolvent;

15 that he was not as good or better than the defendant; that he had no cattle whatever in his ranch, or rail brand, or any cattle whatever, and that he was totally unable, for want of solvency and want of credit, to perform the said contract; and that the representation that R. E. McAnulty was a partner of the said Mosty in the transaction of the fulfilment of the said contract between the defendant and the said Mosty was also absolutely untrue. And your orators aver that the said McAnulty was not at the time of the said assignment of said contract, and never had been, a partner of the said Mosty in the transaction with said defendant for the delivery of the cattle mentioned in said contract, and that he had no concern whatever with the same, and was not bound in any way for the fulfilment of the said contract, as partner or otherwise.

And your orators aver that the representations aforesaid made by the defendant to your orator Buzard was the inducement for him to deliver up the contract he had made with the defendant for the benefit of your orators, and that it was the inducement for the said Bu-

zard to change the position of your orators with the said Houston,
and to pay him the money he alleged to have advanced to the
16 said Mosty and to execute the obligation of your orators to the
said Houston to pay him on the fulfilment of the said contract by said Mosty eighteen hundred and thirty-seven $\frac{50}{100}$ dollars, and to take from the said defendant his assignment of the said contract, with a stipulation therein that he should not be responsible thereon for the failure of said Mosty to comply with and perform the same.

And that without the said representations made by the said Houston your orators would have never delivered up the contract of the said defendant with your orator, Buzard, for the benefit of your orators, because your orators aver that the said Houston had been represented by his acquaintances to be perfectly good and solvent, and your orator believes him still to be so, and to be able to carry out and fulfil the same. Nor would your orators have given up the said contract with the defendant for the delivery of cows and bulls, because the said contract was of peculiar value to your orators in this, that they own and have under their control a very large tract of land of near forty thousand acres, fit for pasture, situated on the
Nueces river, in Zavala county, which tract of land they are
17 engaged in fencing for a pasture for the purpose of engaging
in the raising of cattle; that the cattle mentioned in the contract with the defendant were of the precise character needed for breeding purposes by your orators, and were intended to be placed by them in the said pasture for that purpose, all of which the defendant well knew.

That owing to the increasing demand for such cattle they had become scarce in the market and difficult to procure, and your orators would not have yielded to the said Houston his contract to deliver cattle as aforesaid and have taken any other contract from him in lieu thereof, unless he had been assured that the contract was a safe one and certain to be fulfilled.

And your orators aver that the above-mentioned statements and acts and doings of the said defendant by which your orators were induced to give up to said defendant Houston the contract with him and to take the assignment of the contract of said Mosty with said Houston were deceitful and fraudulent, and that they were intended by the said defendant to deceive your orators, and that they did deceive your orators to their great injury, to wit, to the extent of the
fifteen thousand dollars paid to him, the said defendant,
18 thereon, and to the further extent of ten thousand dollars, or
some other large sum which your orators will have to pay in stocking their said pasture with cattle for breeding purposes and the probable and almost certain loss for the next year of the increase of that number of cattle in said pasture, because your orators aver that owing to the continued increased demand for that kind of cattle for breeding purposes since the making of said contract with said defendant Houston on the 14th October, 1881, the market is well nigh exhausted, and your orators do not know when the said contract for the number, quality, and kind of cattle can again be procured by them for breeding purposes during the next year unless the contract

made as aforesaid with the defendant Houston be enforced by your honors.

And your orators show and aver that they were induced to take the said contract of said Mosty with the defendant and to take the assignment thereof by said defendant to them in which it was stipulated by said defendant that he was not to be responsible for the nonfulfilment thereof by the said Mosty solely on the false statements aforesaid of the said defendants, and particularly on
19 the false statement that the said R. E. McAnulty was a partner in the fulfilment of the same with said Mosty.

Your orators, nor either of them, know anything as to the truth of the defendant's assertion of the solvency and ability of said Mosty to carry out the said contract, nor was he able at San Antonio to obtain any information thereof, but that information could only be properly procured in Lampasas county, Texas, where the said Mosty resided, which county was at a great distance from the place where the contract with said defendant was being negotiated, and they knew no person at Lampasas or in said county of Lampasas from whom they might obtain correct information.

That your orators knew the said McAnulty, who was represented by the defendant to be a partner with the said Mosty in the fulfilment of said contract, and knew him to be perfectly solvent, and believed he was a man of honor and strict in the performance of his engagement, and he felt satisfied that if said McAnulty was such partner, as represented, the contract would be fulfilled strictly and punctually; and in order to reassure himself he made inquiries among persons at San Antonio who knew the said McAnulty
20 as to his solvency, ability to fill his contracts or anything in which he was interested, and as to his character, and that the said inquiry confirmed his own opinion that he was solvent, able to fill all contracts and engagements, and was honorable in his dealings.

But your orators had no opportunity to enquire of the said McAnulty whether the representation of the defendant was true that he was a partner or interested in the fulfilment of the said contract between the said Mosty and the defendant.

They aver that the said McAnulty resides in Austin county, Texas, at a great distance from San Antonio; that he is often away from home, and your orators would not have known where to communicate with him on the subject.

And so your orators say they are free from blame in having taken the assertions and representations of the defendant aforesaid as true, because the defendant, so far as your orators could get information, stood fairly as a truthful and honorable man, and there was no means at hand, or by any effort your orator could make, to ascer-
21 tain the truth of said representations. And your orators show as a fact that the said Mosty at the time of the transfer of the contract between the said Mosty and the defendant to your orators by the defendant was absolutely insolvent and had no property subject to be taken by his creditors; that on the 7th October, 1881, the said Mosty had sold and transferred all cattle and other interests in

Texas and elsewhere of which any knowledge can be had to R. E. McAnulty in payment or part payment of a debt he owed to the said McAnulty of eighty thousand dollars or some other large sum, which sale and assignment was placed on record in Lampasas county in a few days thereafter, and the said McAnulty long before the said assignment of said Mosty by defendant to your orators was made had taken possession of the property so sold and assigned by said McAnulty to him.

And your orators believe and charge that the said defendant, at the time he assigned the said contract to your orators and received their money thereon, well knew of the insolvency of the said Mosty, or had good reason to believe that he was in failing circumstances.

22 That the defendant had long been engaged in trading in cattle in Texas, and was well acquainted with the dealers in cattle in said State, and had many acquaintances and great facilities for obtaining information which were not possessed by your orators, they being comparatively strangers in Texas and just engaged in establishing their pasture for the purpose of rearing cattle in Texas.

That other persons similarly interested as said defendant, who had contracts with the said Mosty for the delivery of cattle, and who had advanced money to him on such contracts, knew of the said failure of said Mosty before the said first day of November, 1881, and knew the losses they had suffered were without remedy.

Wherefore your orators charge that the said transfer and assignment of the said Mosty contract with the defendant, by the said defendant to your orators, was well known to said defendant, at the time of said assignment, to be a worthless contract, and incapable of being filled or performed by the said Mosty, or he had good reason to believe that the same was worthless.

23 And your orators further aver that, at the time of the said assignment of said contract to your orators by the defendant, and the receipt by defendant of your orators' money thereon, the said Mosty was insolvent and the said contract was worthless. And your orators aver that the said defendant had already lost the money he had advanced to said Mosty upon the same, and that there was no consideration for the giving up of the contract your orators had with the defendant and receiving in lieu thereof a transfer from defendant of the worthless contract he had with the said Mosty.

Your orators therefore bring into court the contract above referred to between the said Mosty and the defendant, that the same may be delivered up to the said defendant. They also bring into court the receipt for money by the said Mosty to defendant dated 19th August, 1881, and the letter of the said Mosty to the defendant dated 28th September, 1881, evidencing the payment of money on the said contract with the said Mosty by the defendant, that they may also be delivered to the defendant.

They also bring into court the assignment by the defendant to your orators of the said contract between said Mosty to the de-

24 fendant herein particularly described, that the same may be cancelled and held for naught, and that your orators may have decree against the said defendant, requiring him to bring into court the contract made for the benefit of your orators by your orator Buzard with the defendant of date about the 14th of October, 1881, that the same may be re-established as the contract between your orators and the said defendant, and that he bring into court the excess of money paid by your orators on the assignment of the said Mosty contract beyond the amount that would have been due him on the contract between your orator Buzard for the benefit of your orators and said defendant; and that he further bring into court the obligation of your orators to him for the eighteen hundred and thirty-seven 50-100 dollars, that it may be delivered to your orators or cancelled, and that your orators be placed in *statu quo* as before the said assignment was made, and restored to their rights as against the defendant.

And your orators show that they used all diligence that was possible to be and to make the said contract with said Mosty good, by visiting the county of Lampasas, and trying to ascertain if any-

25 thing could be made out of the said Mosty thereon, but he ascertained that said Mosty was utterly insolvent, and cannot and will not be able to perform the same, and that your orators immediately notified the said defendant and offered to return the said contract to him and all papers he had received and demanded a rescis-ion of the transaction with said defendant and a repayment of the money advanced upon the said assignment, which the said defendant refused to do.

All of which actings and doings, pretences and refusals, are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises.

To the end, therefore, that the defendant may make true answer to the several matters alleged in your orators' bill of complaint your orators pray that the said defendant may be compelled to make true, direct, and perfect answer thereto, to the best of his knowledge, remembrance, information, and belief, of all and singular the matters aforesaid, as fully and particularly as if the same were repeated, and the defendant of them and every of them distinctly interrogated thereto.

26 Your orators pray that the contract of assignment by the said defendant to your orators on the first day of November, 1881, of the contract made between the said L. A. Mosty and the defendant, of date August 13th, 1881, be rescinded and cancelled and declared null and void.

That the defendant be compelled to bring into court for cancellation the obligation of your orators to pay him eighteen hundred and thirty-seven $\frac{50}{100}$ [dollars], dated November 1st, 1881, the same growing out of the said assignment of the Mosty contract to your orators, and that the same be declared null and void and be cancelled.

That the said defendants be compelled to bring into court and deliver to complainants the excess of money paid him on the first

day of November, 1881, between the amount your orators were to pay him in the contract of your orators, by your orator, the said Buzard, and the defendant, of date about the 14th October, 1881, and the amount actually paid him on the first of November, 1881, on receiving the assignment of the contract of said Mosty with defendant.

And your orators pray that the said original contract of date about 14th October, 1881, between your orator, the said Buzard, for the benefit of your orators, and the defendant, be brought into
27 court by the said defendant, and that the same be confirmed as a valid subsisting and binding contract, by suitable decrees and orders, between your orators and the said defendant, and that the same be enforced by your honors under such terms and stipulations as may be deemed just and proper.

And your orators pray that if the said contract of 14th October, 1881, between your orator Buzard, for the benefit of your orators, and the defendant, cannot by the rules and practice of your honor's court be enforced as against the defendant, that the said defendant be compelled to return to your orators the five hundred dollars paid on the said contract about the 14th day of October, 1881, and the fourteen thousand five hundred dollars paid by draft in favor of the defendant on the assignment of the contract between said Mosty and the defendant by the defendant to your orators on the first day of November, 1881, with interest on said sums, and that your honor will further decree that the defendant shall pay to your orators the damage of ten thousand dollars, which they have sustained by reason of the fraudulent obtaining of said contract for the benefit of your orators, made by your orator Buzard with the defendant, and by reason of the other injuries that have resulted to your orators therefrom, as herein set forth.

28 And your orators pray that they may have against the defendant such further orders and decree as to equity belongs under the facts and circumstances herein set forth, in order that full justice be done to your orators in the premises.

May it please your honors to grant unto your orators a writ of subpœna to be directed to the said Robert A. Houston, the defendant, thereby commanding him at a certain time, under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand, to perform, and abide such further order, direction, and decree therein as to this honorable court shall seem agreeable to equity and good conscience.

And your orators will ever pray, &c.

JNO. A. GREEN,
N. O. GREEN,
Solicitors for Compl'ts,
Soledad St., San Antonio, Texas.

BENJAMIN F. BUZARD,
MOSES HILLARD,
Complainants.

In Chancery.

Between BENJAMIN F. BUZARD & MOSES HILLARD, Complainants,
and
29 ROBERT A. HOUSTON, Defendant.

On this 23d day of November, 1881, at San Antonio, in the State of Texas, before me personally appeared Benjamin F. Buzard, one of the complainants in the above and foregoing bill, and being duly sworn made oath that he has read the above bill and knows the contents thereof, and that the same is true of his own knewledge except as to matters therein stated to be on his information and belief, and as to those matters he believes them to be true.

B. F. BUZARD.

Sworn to and subscribed before me, this 23d day of November, 1881.

W. C. ROBARDS,
Clerk U. S. Circuit Court.

Endorsed: No. 9. In chancery. Benj. F. Buzard, Moses Hillard, complainants, *vs.* Robert A. Houston, defendant. Original bill. Filed Nov. 23d, 1881. W. C. Robards, clerk.

30 To W. C. Robards, clerk circuit court U. S., at San Antonia.

DEAR SIR: You will please enter an appearance in your order book for Robert A. Houston, defendant in cause No. 9 in chancery in said U. S. circuit court, wherein B. F. Buzard and M. Hilliard are plaintiffs and said Robert A. Houston is defendant, on rule day in January.

JAMES F. MILLER,
Solicitor for Deft, Gonzales, Texas.

Endorsed: No. 9. Benj. F. Buzard & Moses Hillard *vs.* R. A. Houston. Entry of appearance. Filed Dec. 20, 1881. W. C. Robards, cl'k.

31 BUZARD & HILLIARD *vs.* ROBERT A. HOUSTON. } In Chancery. No. 9.

The defendant, Robert A. Houston, by protestation, not acknowledging or confessing all or any of the matters and things in said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer showeth:

First. That complainant's bill shows that the pretended contract, which complainants seek to establish by a decree of this court, was never in fact consum-ated and executed by the complainants and the defendant, but was a mere memorandum of an agreement which was to be exe:uted at a future day, with other conditions and terms than those set out in it and subject to re:o:ation by either party to it.

Second. Complainants' bill shows the fact that this agreement for a contract was never in fact finally executed by the complainants and the defendant, and was in fact cancelled and annulled by a subsequent arrangement between complainants and defendant.

Third Complainant's bill shows that none of the contracts
32 set out in said bill were to be performed earlier than the month of May, 1882, and that no cause of action could arise to complainants upon any of said contracts before the time limited in such contracts for the performance thereof.

Fourth. Complainants' bill discloses the fact that their only cause of action, if any they have, is for the amount of money paid by them on said contract and damages for the breach of the contract (if any there was), in the nature of a penalty, and for which complainants have an adequate and complete remedy at law.

Wherefore defendant demands the judgment of this honorable court, whether he shall be compelled to make further or other answer to said bill or any of the matters and things therein contained.

And he prays to be hence dismissed with his reasonable costs in this behalf expended.

JAMES F. MILLER,
Defendant's Solicitor.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

JAMES F. MILLER,
Defendant's Solicitor.

33 STATE OF TEXAS, *County of* ——:

Before me, the undersigned authority, personally came Robert A. Houston, defendant, in a cause pending in the circuit court of the United States for the western district of Texas, at San Antonio, wherein Buzard & Hilliard are complainants, and said Houston is defendant, and says that the demurrer filed for him in said cause is not interposed for delay.

R. A. HOUSTON.

Sworn to and subscribed before me.

JNO. S. CONWAY, *C. J. G. C.*

Endorsed: No. 9. In chancery. Buzard & Hilliard *vs.* Robert A. Houston. Def't's demurrer. Filed Feb'ry 6, 1882. W. C. Robards, cl'k.

34 B. F. BUZARD & MOSES HILLIARD, Complainants,
vs.
ROBERT A. HOUSTON, Defendant. } No. 9.

This cause now coming on to be heard upon the demurrer of the defendant to the complainants' bill, and the same being considered, it is adjudged and decreed that the said demurrer be overruled.

It is further ordered that the defendant file his answer herein on or before the rule day in May next.

Endorsed: No. 9. Benj. F. Buzard & Moses Hilliard *vs.* Rob't A

Houston. Order overruling demurrer. Filed Oct. 15, 1883. W. C. Robards, cl'k.

35 BUZARD & HILLIARD *vs.* ROBERT A. HOUSTON. } In Chancery. No. 9.

The answer of Robert A. Houston, defendant to the bill of complaint of Buzard and Hilliard, suit pending in the circuit court of the United States for the western district of Texas, at San Antonio.

The defendant, Robert A. Houston, now and at all times hereafter reserving to himself all manner of advantage or benefit from any exception and demurrer to the many errors and insufficiencies in complainants' bill contained, for answer thereto or unto such parts or so much thereof as this defendant is advised is material for him to make answer unto, he answers and says:

That it is not true that he made the agreement or contract set out and copied in the bill of complainants as under date, on or about the 14 day of October, 1881, and alleged in said bill to have been signed by complainant, B. F. Buzard, and defendant, and deposited with one D. W. Hinkle; that said bill of complaint does not set out said agreement truly and correctly, and is not in substance and
36 legal effect a copy of any paper, executed and delivered by defendant to complainants, or either of them.

And further answering on this behalf, defendant says that on the 14th day of October, 1881, in the City of San Antonio, defendant and B. F. Buzard, with the purpose and intent of afterwards making a contract for the sale and delivery of fifteen hundred head of cows and bulls, executed an agreement or memorandum for a contract, to be afterwards executed by them in substance and legal effect as follows:

SAN ANTONIO, *October 14th*, 1881.

Received this day of B. F. Buzard five hundred dollars in part payment for fifteen hundred head of cattle, cows and bulls, to be contracted for next Tuesday, on which Mr. Buzard agrees to advance 50% of the price, which is to be *be* fifteen dollars and fifty cents per head.

R. A. Houston agrees to make the contract at the time specified, cattle to be delivered at Lampasas, Texas, between the 1st and the 10th of May, 1882. If the cattle are not delivered, R. A. Houston agrees to forfeit to B. F. Buzard fifteen hundred dollars; if the contract is not filled, B. F. Buzard finds himself to take two
37 thousand cows at the same figures, and to forfeit fifteen hundred dollars if he fails to comply with the contract.

Which instrument was signed by defendant and said B. F. Buzard, and D. W. Hinkle and J. H. Presnall signed the same as witnesses, and was deposited with D. W. Hinkle for the use and benefit of said Buzard and defendant, which instrument was not intended, nor was it understood to be, a contract final, and setting out all that

was to be embraced in the contract which was afterwards to be executed, but was intended as a memorandum or basis for a contract which was to be executed by defendant and said B. F. Buzard on the Tuesday next thereafter. And for further answer in this behalf defendant says that he was not informed and did not know that complainant, B. F. Buzard, was contracting with him for or on account of Buzard and Hilliard, and was not informed and did not know of the purpose for which said Buzard desired to purchase said cattle; that no mention was made to defendant of his having any partner in said transaction, and said Buzard signed said memorandum with his own name, and did not use therein any firm
38 name. For further answer in this behalf the defendant says that said memorandum or agreement, signed, as aforesaid, on the 14th of October, 1881, does not set out that defendant is to contract to sell and deliver to said Buzard fifteen hundred cows and fifty bulls, as set out in complainants' bill; that it does not specify that the cows are to be good smooth cows from three to eight years old, as set out in complainants' bill; that said memorandum or agreement only sets out that defendant agrees to enter into a contract on the Tuesday next thereafter to deliver to said Buzard fifteen hundred head of cattle, cows and bulls, without specifying the number of each kind, the age, character, condition, or other description of said animals, all of said matter being left for further negotiation and agreement when said parties came to make the contract contemplated by them on the Tuesday next after said 14 day of October, 1881.

And, further answering in this behalf, defendant says that on the Tuesday next after said 14th day of October, 1881, defendant was confined to his bed by severe illness, and was unable to go to the city of San Antonio to meet said B. F. Buzard and agree upon and execute the contract in accordance with the intent and mean-
39 ing of said memorandum, but, desiring in all things to comply with his promises as far as he was able, defendant sent S. R. Walker to San Antonio to inform said Buzard of his condition and to fix some other time for them to meet and make said contract; that, as the defendant is informed and believes, said Walker, acting for and on behalf of this defendant and said Buzard, did meet in the city of San Antonio, on the Tuesday next after said 14 day of October, 1881, and then and there agree that the time for complainant Buzard and defendant to meet and agree upon the terms of their contract, and complete and execute the same, he fixed for a day between the 10th and 15th day of November, 1881, to be thereafter arranged between said defendant and said Buzard, and that no subsequent day or time was ever fixed in any more definite manner between defendant and complainants for the completion and execution of said contract.

And, for further answer in this behalf, the defendant says on the 31st of October, 1881, he went to San Antonio to attend the fair then about to be held in that city, and in the afternoon of said day in passing along the street of said city he by accident met
40 the said Buzard, when after other conversation the matter of their cattle transaction came up in their conversation, when

it was proposed, as they were both present in said city, they could settle said matter without waiting for the time fixed by and between said Walker and said Buzard for that purpose.

During this interview defendant proposed to said Buzard a contract which he (defendant) held with L. A. Mosty, of Lampasas county, Texas. If said Buzard would pay defendant $15,000.00, which he had advanced to said Mosty, and give him a note for the profit defendant was making on the Mosty contract, payable when the cattle were delivered by Mosty, rating the cattle at the price of fifteen & $\frac{50}{100}$ dollars per head. Said Buzard, after carefully reading said contract, asked defendant to give him until next day to find out about it. On the next day, it being the first day of November, 1881, the said Buzard, after again reading said contract, and considering its terms, proposed to defendant to take said Mosty contract upon the terms proposed if defendant would guarantee said contract. This defendant declined to do, & defendant then pro-
41 posed to said Buzard to abate twenty-five cents per head off the cattle if he, Buzard, would take the assignment of said contract and release defendant from all liability thereon; that is to say, that instead of rating said cattle at fifteen & $\frac{50}{100}$ dollars per head, they were to be rated at the price of fifteen & $\frac{25}{100}$ per head, which arrangement was accepted by said Buzard, and the transfer drawn up and signed, a copy of said transfer being set out in complainants' bill.

And for further answer on this behalf, the defendant says it is not true he at any time made any representation to said Buzard in reference to the transfer of said contract with said Mosty, or as to the ability of said Mosty to perform said contract, which he knew to be untrue, and that he did not make any statement to said Buzard in reference thereto which he (defendant) did not believe to be true.

And for further answer in this behalf, defendant says that it is not true that he, at any time during said negotiation for the transfer of said contract with L. A. Mosty to complainant, represented to said Buzard, or stated as a fact within the knowledge of defend-
42 ant, that L. A. Mosty was as good or better than defendant; that L. A. Mosty was solvent and able to perform his contract, or that said Mosty had twelve hundred head of cattle on his rail or ranch brand, or that R. E. McAnulty was a partner of said Mosty and bound upon his (Mosty's) contracts.

Defendant says that he did say to said Buzard at some time during said negotiation that he (defendant) believed said Mosty to be good and solvent, and able to perform his contracts. That it was generally understood that said Mosty had handled over thirty thousand head of cattle during the season of 1880, and that was more cattle than he (defendant) had ever been able to handle. That defendant also told said Buzard that, coming down from Kansas City to Texas, said Mosty had told defendant that R. E. McAnulty was a partner with him in his cattle contract. That during said conversation said Buzard said he did not want Eastern Texas cattle, when defendant said to him that Mosty had told him (defendant)

that he (Mosty) had about twelve hundred head in the rail brand,
and defendant supposed from this statement of Mosty that he,
43 Mosty, expected to put these cattle in upon defendant's contract, and were Lampasas cattle; but defendant says that this last conversation had no reference to the solvency of said Mosty, but solely to the character of cattle which said Buzard would probably receive under said contract, and defendant believes that this conversation occurred after the transfer of the contract had been made, although his recollection as to the time when it occurred is not distinct and certain. And for further answer defendant says that it was true that he believed said L. A. Mosty to be good & solvent and able to perform his contracts; that it was true that he, defendant, believed said L. A. Mosty to be as good and better than he (defendant) was. That it was currently reported and believed by defendant that said L. A. Mosty, during the cattle season of 1880, had handled over thirty thousand head of cattle, and had made large profits thereon, and that it was true that defendant had never been able to handle such a large number of cattle. That it was generally understood in Gonzales county, where defendant resided,
that said Mosty was a large dealer in cattle and perfectly
44 good for his contracts, and as an evidence of this defendant and others of his friends and acquaintances had advanced to said Mosty large sums of money upon contracts for the future delivery of cattle, requiring no security for the same. That defendant did believe, both at the time he made said contract with said Mosty and at the time he transferred the same to complainants, that said Mosty was good and able and willing to perform his contract with this defendant. That it was not known to defendant at the time he transferred said contract to complainants, nor was it known to any one of whom defendant might have acquired the information, that said Mosty was not in a condition to perform his contract with defendant. And at the time of the transfer of said contract to complainants, said Mosty was generally regarded as solvent and able to perform his contracts, and the contrary could not have been known to defendant at the time he transferred said contract to complainants by the use of any means at his command.

Defendant further says all the means and source of information open to him were also open to said complainants for information in
regard to the solvency of said L. A. Mosty, and that the de-
45 fendant had no knowledge or information in regard to the solvency of said Mosty that he did not communicate to complainants.

Defendant further says that when he stated to complainants that L. A. Mosty had told him, defendant, that R. E. McAnulty was a partner with him, said Mosty, in his cattle contract, that it was true that said Mosty had so told defendant said fact, and that defendant believed the same to be true as stated by said Mosty.

Defendant says further that he is informed and believes that the statement so made by said Mosty was in fact true, and that said R. E. McAnulty was in truth and in fact a partner with said Mosty in

his (said Mosty's) cattle contracts, and was bound as a partner upon said Mosty's contract with the defendant.

Defendant further says that he is informed and believes that the said contract of partnership by and between said L. A. Mosty and said R. E. McAnulty was made and entered into on or about the 10th day of August, 1881, and continued until about the 7th day of November, 1881, and that on or about the 7th day of November, 1881, said parties attempted to settle said partnership by said
46 Mosty conveying to said McAnulty all the assets of said partnership, amounting to about four thousand head of cattle, which had been bought with money advanced to said Mosty upon cattle contracts, and by conveying to said McAnulty contracts for the purchase of cattle made by said Mosty upon which said Mosty had advanced all or part of the purchase money, which assets so turned over to said McAnulty defendant is informed and believes was reasonably worth from one hundred and twenty-five to one hundred and fifty thousand dollars.

Further answering in this behalf this defendant says that [it] is not true that he resided near the said L. A. Mosty, or had any knowledge of said Mosty- financial condition other than his general reputation at that time among stock men; that defendant resided about 125 miles from where said Mosty resided & has carried on business.

Defendant says that his cattle business has been done in Gonzales and the coast counties of Texas.

That complainants, before entering into said contract with defendant, took time to enquire into the solvency of said L. A.
47 Mosty, and could have had more time if they had required it, as the time fixed in which they were to complete and execute their agreement with defendant did not expire until the 15 day of November, 1881.

And for further answer in this behalf defendant says that he believes, and therefore charges, that it is not true that complainants accepted the assignment of said contract between defendant & L. A. Mosty upon the representations of defendant, but that they accepted the assignment of said contract because it was a contract for a more valuable class of cattle than was specified in the agreement between complainants and defendant, and because complainants expected to make as profit the interest on the fifteen thousand dollars paid by defendant to L. A. Mosty and said contract at the rate specified in said contract, and the rebate of twenty-five cents per head on said fifteen hundred and fifty head of cattle, and because they were stock raisers and dealers in cattle and knew of said Mosty's reputation for solvency and performing his contracts, and that the complainants in accepting the transfer to them of defendant's con-
48 tract with said Mosty acted upon their own judgment as to the value of said contract and upon their own information of said Mosty's solvency.

And for further answer in this behalf, the defendant says that it is true that after the assignment of said Mosty's contract had been

consum-ated, the said Buzard executed and delivered to him the following paper, viz:

SAN ANTONIO, TEXAS, *November 1st*, 1881.

"This is to witness that we having this day become the assignee of Mr. R. A. Houston, of all his rights under and by virtue of a contract for delivery of cattle between him and L. A. Mosty for the consideration of $15,000.00 paid down, and the further sum of eighteen hundred & seventy-five dollars and $\frac{50}{100}$ to be paid by us to R. A. Houston upon the final delivery to us of the cattle by said Mosty under said contract between R. A. Houston and Mosty."

(Signed) BUZZARD & HILLIARD.

Which paper was then together with the original agreement between defendant and said Buzard delivered to defendant, and will be produced on the trial of this cause.

And for further answer in this behalf, this defendant says
49 that all the matters and things in complainant's bill contained, which are material for him to answer, and not herein sufficiently answered, avoided, or denied, are true as defendant believes.

All of the matters and things in this answer set out defendant is ready to aver and prove as this honorable court may direct, and he prays to be herein dismissed with his reasonable costs and charges in this behalf expended.

R. A. HOUSTON.
JAMES T. MILLER,
Solicitor for Defendant, Gonzales, Texas.

50 In Chancery.

Between BENJAMIN F. BUZARD and MOSES HILLIARD, Complainants, *and* ROBERT A. HOUSTON, Defendant. } No. 9.

On this, the tenth day of April, 1882, before me, W. V. Collins, a notary public, of Gonzales county, in the State of Texas, at my office in the town of Gonzales, in the county and State aforesaid, personally came Robert A. Houston, defendant in the above-entitled cause, and who, being by me duly & legally sworn, made oath that [he] has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except such matters as are therein stated to be upon his information and belief, and as to those matters that he believes them to be true.

R. A. HOUSTON.

Subscribed and sworn to before me, at my office in Gonzales county and State of Texas, on the 10th day of April, A. D. 1882, to which I certify under my hand and seal of office, this day and date above written.

[SEAL.] W. V. COLLINS,
Notary Public, G. C.

51 Endorsed: No. 9. In chancery. Benjamin F. Buzard and another complainant *vs.* Robert A. Houston, defendant.

Original answer of defendant. Filed April 13, 1882. W. C. Robards, cl'k.

52 The Circuit Court of the United States for the Western District of Texas, at San Antonio. In Chancery.

May Rules, 1882.

BENJAMIN F. BUZARD AND MOSES HILLARD, Comp'ts,
vs.
ROBERT A. HOUSTON. } No. 9.

Exceptions to Answer for Insufficiency.

Come now the complainants and take exceptions to the answer of the defendant to the bill of complaint in this cause filed herein on the 13th day of April, A. D. 1882, for insufficiency, for the following reasons:

First Exception. For that the defendant hath not in and by said answer, according to the best of his knowledge, remembrance, information, and belief, answered and set forth whether as charged in complainants' bill a contract was made between Benjamin F. Buzard, one of the complainants herein, on behalf of himself and Moses Hillard, the other complainant herein, with defendant, Robert A. Houston, and whether the same is now in the possession of said
53 defendant, which said bill calls upon him, defendant Houston, to answer whether or not the bill charges the said contract in terms, and also requires him to bring said contract into court and produce the same; which allegation and charges in the bill he does not answer directly, but attempts to evade the answer thereto by stating "that on the 14th day of October, A. D. 1881, in the city of San Antonio, defendant and B. F. Buzard, with the purpose and intent of afterwards making a contract for the sale and delivery of fifteen hundred head of cows and bulls, executed an agreement or memorandum for a contract, to be afterwards executed by them, in substance and legal effect as follows:

SAN ANTONIO, *October* 14*th*, 1881.

Received this day of B. F. Buzard five hundred dollars, in part payment of fifteen hundred head of cattle, cows and bulls, to be contracted for next Tuesday, on which Mr. Buzard agrees to advance fifty per cent. of the price, which is to be fifteen dollars and fifty cents per head. R. A. Houston agrees to make the contract at the time specified, cattle to be delivered at Lampasas, Texas,
54 between 1st and 10th of May, 1882. If the cattle are not delivered, R. A. Houston agrees to forfeit to B. F. Buzard fifteen hundred dollars; if the contract is not filled, B. F. Buzard binds himself to take two thousand cows at the same figures, and to forfeit fifteen hundred dollars if he fails to comply with the contract. Which instrument was signed by the defendant and B. F. Buzard, and E. W. Hinkle and J. A. Presnall signed the same as witnesses."

Bill, p. 1 & 2:

Second Exception. For that the defendant hath not, in and by his said answer, in manner aforesaid answered and set forth whether as charged in the bill that afterwards, on the 31st of October, 1881, when negotiations were renewed for the purpose of closing and completing the contract between the said parties, as mentioned in complainants' bill, the defendant proposed to the said Buzard that in lieu of said contract with him for the cows and bulls mentioned in the contract in the hands of J. W. Hinkle, the said Buzard should take from him, the said defendant, an assignment of a contract
55 which the defendant had made with one L. A. Mosty, of Lampassas county, in the State of Texas, on the 13th day of August, 1881, for the delivery of cattle in Lampassas county aforesaid; but the defendant, neither denying nor admitting the truth of said allegation, attempts to evade the same in his answer.

Bill, p. 5:

Third Exception. For that the said defendant hath not, in and by his said answer, in manner aforesaid answered and set forth whether, as charged in the bill as an inducement to your orator, the said Buzard, to make the exchange of contracts, the said defendant Houston then and there represented to the said Buzard that the said Mosty was good and solvent and able to perform his said contract; that he was better than defendant; and that the said Mosty at that time had twelve hundred head of the cattle in the rail or ranch brand of the said Mosty; that there was no doubt of the performance of said contract, as R. E. McAnulty was a partner with the said Mosty in the performance of the same; but the defendant, neither admitting nor denying said allegation, attempts to evade the same in his said answer.

56 Bill, p. 6:

Fourth Exception. For that the said defendant hath not in and by his said answer in manner aforesaid answered and set forth whether, as charged in the bill, the defendant Houston refused to guarantee the fulfillment of the contract of said Mosty, alleging as the reason that at that time he would be employed in other transactions and could not well attend to the completion of said contract by the said Mosty, and that it would be a useless thing for him to attend to the delivery of the cattle by Mosty, and then hand them over immediately at the same place to your orators, but, as a further inducement to your orator, said Buzard, that he should take the offered assignment of said contract with said Mosty, he, the said defendant Houston, proposed that he would deduct twenty-five cents per head on the number of said cattle from the price of fifteen dollars, and one-half agreed by the said Buzard for your orators to be paid in the contract between the said Houston and Buzard, and would take the obligation of your orators to pay to him at the time of the performance of the said contract by the said Mosty the
57 sum of eighteen hundred thirty-seven $\frac{50}{100}$ dollars, and the said defendant then and there reiterated his representations that the said Mosty was good and solvent, and able to perform the

said contract; that he was as good or better than the said defendant; that said Mosty had twelve hundred head of these cattle in his rail or ranch brand; that there was no doubt of the fulfillment of the contract; that R. E. McAnulty was a partner with the said Mosty in the fulfillment of this contract; but the defendant, neither admitting nor denying said allegation, attempts to evasively answer the same as follows:

Answer, p. 5 & 6:

"Defendant says it is not true he at any time made any representations to said Buzard in reference to the transfer of said contract of said Mosty, or as to the ability of said Mosty to perform said contract, which he knew to be untrue, and that he did not make any statement to said Buzard in reference thereto which defendant did not believe to be true.

Defendant says that it is not true that he at any time during said negotiation for the transfer of said contract with L. A. Mosty to complainants represented to said Buzard, or stated as a fact
58 within the knowledge of defendant, that L. A. Mosty was as good or better than defendant; that L. A. Mosty was solvent and able to perform his contracts, or that said Mosty had twelve hundred cattle in his real or ranch brand, or that R. E. McAnulty was a partner of said Mosty, and bound upon his contracts, etc.," and the remainder of said allegation he has not answered at all.

Bill, p. 9:

Fifth Exception. For that the said defendant hath not, in and by his said answer, in manner aforesaid answered and set forth whether or not it is true, as charged in the bill, that the representations of the defendant that said Mosty was good and solvent and able to perform said contract for the delivery of said cows and bulls; that the said Mosty was as good or better than the defendant, and that the said Mosty had twelve hundred head of these cattle in his rail or ranch brand; that there was no doubt of the fulfillment of the contract. And the representation of the defendant aforesaid that R. E. McAnulty was a partner of the said Mosty in the transaction of the fulfillment of the said contract with the defendant were, at the time they were made, absolutely untrue; that at the time
59 aforesaid the said Mosty was wholly insolvent; that he was not as good or better than the defendant; that he had no cattle whatever in his rail or ranch brand, or any cattle whatever, and that he was totally unable for want of solvency and want of credit to perform said contract; but the defendant attempts, without denying or admitting the above allegation of the bill, to evade the same by stating that some time during the said negotiation he did say to said Buzard that he believed said Mosty to be good and solvent and able to perform his contracts; that it was generally understood that L. A. Mosty had handled over thirty thousand cattle in 1880, and that was more cattle than ever he had been able to handle; that Mosty told him he had about twelve hundred head in the rail brand, and defendant supposed from the statement of Mosty that he, Mosty, intended to put these cattle in on this contract; and

defendant further states that it was true that defendant believed that Mosty was good and solvent and able to perform his contracts, and that he, Mosty, was as good or better than he, defendant, was;
60 that it was not known to him that Mosty was not in condition to perform his contracts.

Bill, p. 9 & 10:

Sixth Exception. For that the said defendant hath not in and by his said answer, in manner aforesaid, — and set forth whether or not it is true, as charged in the bill, that the representation that R. E. McAnulty was a partner of said Mosty in the fulfillment of the said contract between the defendant and said Mosty, was also absolutely untrue, and that the said McAnulty was not at the said assignment of said contract, & never had been a partner of said Mosty in the transaction with said defendant for the delivery of the cattle mentioned in said contract, and that he had no concern whatever with the same, and was not bounden in any way for the fulfillment of said contract as partner or otherwise; but the defendant, without denying or admitting said allegation, attempts to evade it by saying in his said answer that he, defendant, told Buzard
Answer, p. 6. that coming down from Kansas City said L. A. Mosty had told defendant that R. E. McAnulty was a partner with him in his cattle contract.
61 That when he stated to the complainants that R. E. McAnulty was a partner with him, said Mosty, in said Mosty's cattle contract, it was true that Mosty had so told him, and defendant believed it to be true as stated by Mosty, and defendant is informed, and believed, that the statements so made by Mosty was in fact true; that McAnulty was a partner with said Mosty in his (Mosty's) cattle contracts, and was bound as a partner upon said Mosty's contract with defendant.

Seventh Exception. For that the said defendant hath not in and by his said answer in manner aforesaid answered and set forth whether, as the bill alleges, it is a fact that the said Mosty at the time of the transfer of the contract between said Mosty and defendant to complainants by the defendant was absolutely insolvent and had no property subject to [be] taken by his creditors. That on the 7th day of Oct., 1881, the said Mosty had sold and transferred all cattle and other interest in Texas and elsewhere, of which any knowledge can be had, to R. E. McAnulty in payment or part payment of a debt he owed said McAnulty of eighty thousand
62 dollars or some other large sum, which sale and assignment was placed on record in Lampasas county, Texas, within a few days thereafter, and the said McAnulty, long before the transfer of the contract to complainants by defendant, had taken possession of the property so sold and transferred by Mosty to him, but that defendant, without denying or admitting the foregoing allegation, attempts in his said answer to evade the same by
Answer, 8 & 9. aver-ing that he is informed and believes that said contract of partnership by and between L. A. Mosty and R. E. McAnulty was made and entered into about the

10th day of August, 1881, and continued until about the 7th day of November, 1881; that on or about the last-named date said partners attempted to settle said partnership by said Mosty conveying to said McAnulty all the assetts of said partnership, amounting to about four thousand head of cattle, by conveying to said McAnulty contracts for the purchase of cattle made by the said Mosty, upon which said Mosty had advanced all or part of the purchase money.

63 In all or some of which particulars the said complainants are advised that the said answer of the said defendant is evasive and insufficient and ought to be amended; and humbly pray that the defendant may be compelled to amend the same and to put in a full, complete, responsive and sufficient answer to the bill of the complainants.

JNO. A. & N. O. GREEN,
Solicitors for Complainants, &c.
H. E. BARNARD,
Of Counsel

Endorsed: No. 9. Equity. In the U. S. circuit ct., western district of Texas. Benjamin F. Buzard *et al. vs.* R. A. Houston. Exceptions to answer. Filed May 1st, 1882. W. C. Robards, clerk, per E. S. Nicols, deputy.

64 At Rules, Monday, June 5, 1882.

BENJ. F. BUZARD & MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON.

In this case now comes the complainants, and set down for hearing the exceptions of the complainants to the answer of the defendants filed herein before the judge of the circuit court of the United States for the western dist. of Texas, to be heard at Austin, Texas, on Monday, July 3d, 1882.

JNO. A. & N. O. GREEN,
Solicitors for Complainants.

United States Circuit Court for Western Dist. of Texas. At Rules, Austin, July 3, 1882.

B. F. BUZARD & MOSES HILLARD *vs.* R. A. HOUSTON.

Upon the hearing and consideration of the within exceptions, it is ordered that each of said exceptions be allowed by the court, and that the defendant, R. A. Houston, make his further answer as provided by the rules of this court in equity.

E. B. TURNER, *Judge.*

65 In Chancery.

BUZARD & HILLARD
vs.
ROBERT N. HOUSTON. } No. 9.

The further answer of Robert A. Houston, defendant, to the bill

of complaint of Buzard & Hillard, suit pending in the circuit court of the United States for the western district of Texas, at San Antonio.

The defendant, Robert A. Houston, saving and reserving to himself, as in and by his former answer to the said complainants' bill was saved and reserved, for further answer thus he answers and says:

This defendant denies that he made or executed the agreement or memorandum set out in the bill of complainants', as under date on or about the 14th day of October, 1881, and alleged in said bill to have been signed by said complainant B. F. Buzard, and defendant, and deposited with one D. W. Hinkle. He further denies that said bill of complaint sets out said memorandum correctly, and he denies that the same is in substance and legal effect a copy of
66 any paper whatever executed and delivered by defendant to complainants or either of them.

And further answering in this behalf, defendant says in this immediate connection and by way of necessary explanation and defence, that on the 14th day of October, 1881, in the city of San Antonio, defendant and B. F. Buzard, with the purpose of entering into a future contract for the sale and delivery of fifteen hundred head of cows and bulls, drew up some sort of a memorandum to serve as a partial basis for said contract, to be in the future entered into by them, said memorandum being in words and figures, as follows:

SAN ANTONIO, *October 14th*, 1881.

Received this day of B. F. Buzard five hundred dollars in part payment for fifteen hundred head of cattle, cows and bulls, to be contracted for next Tuesday.

On which Mr. Buzard agrees to advance 50 % of the price, which is to be fifteen dollars and fifty cents. R. A. Houston agrees to make the contract at the time specified; cattle to be delivered at Lampasas, Texas, between the 1st and 10th of May, 1882.

If the cattle are not delivered, R. A. Houston agrees to forfeit to B. F. Buzard fifteen hundred dollars if the contract is not filled.
67 B. F. Buzard binds himself to take two thousand cows at the same figures, and *and* to forfeit fifteen hundred dollars if he fails to comply with the contract.

Which instrument was signed by defendant and said B. F. Buzard, as principals, and D. W. Hinkle and J. H. Presnall signed the same as witnesses, and the same was placed in the hands of D. W. Hinkle for the benefit of both parties to the same.

Which instrument was not intended, nor was it so understood by either party, to be a final contract containing all that was to be embraced in the said contemplated contract which was afterwards to be executed, but was in fact intended by both parties to be a mere memorandum or informal outline of a contract which was to be entered into by this defendant and said B. F. Buzard on the Tuesday next thereafter.

The original memorandum is herewith filed as Exhibit A, for the information of said complainants, and asked to be taken and con-

sidered as part of this answer, and to be referred to herein as often as may be necessary. (For this exhibit see page 283.)

For further answer in this behalf this defendant denies
68 that he was then informed by said Buzard and then knew that complainant, B. F. Buzard, was contracting with him on account of Buzard and Hillard; and denies that he was informed or that he then knew of the special purpose as alleged in said bill for which said Buzard desired to purchase said cattle.

He denies that any mention whatever was made at the time to defendant by said complainant Buzard, or any one else, of his having any partner in said transaction, and said Buzard signed said informal memorandum with his own name, and did not use therein any firm name.

For further answer in this behalf, this defendant denies that said informal memorandum, signed as aforesaid on the 14th day of October, and above set forth, ever purported to set out that defendant was to contract, sell, and deliver to said Buzard fifteen hundred cows and fifty bulls, as charged in said complainants' bill. He denies that it specifies that the cows are to be good smooth cows, from three to eight years old, as set out in complainants' bill; but said memorandum merely recites that defendant agrees to enter into
69 a contract on the Tuesday next thereafter to deliver to said Buzard fifteen hundred head of cattle, cows and bulls, without specifying the number of each kind, the age, condition, and character, or any other description of said animals, all of said matters being left for further negotiation and determination when said parties came to settle the terms of the said contract contemplated by the said memorandum.

And further answering in this behalf, defendant says, by way of necessary explanation of the foregoing, that on the said Tuesday after said 14th day of October, 1881, defendant was so ill as to be wholly unable to meet in person at the point designated the said B. F. Buzard for the purpose of agreeing upon the terms of the said contract to be executed in accordance with the said informal memorandum, but desiring in all things to comply with his undertaking as far as he was able, defendant sent an agent of his, named S. R. Walker, to the point designated to meet and inform said Buzard of his illness, and to name some other time of meeting when they should agree upon the terms of said contract; that this de-
70 fendant is informed and believes, and so states the fact to be, that said Walker, as agent aforesaid, and the said Buzard did meet at the place named on the Tuesday next following said 14th day of October, 1881, and then concluded that the time for complainant Buzard and defendant to meet and consider concerning the nature, terms, and character of the contemplated contract, and, if possible, agree upon the same, should be fixed for a day between the 10th and 15th of November, 1881, which day was to be thereafter determined upon by defendant and said Buzard, and that no subsequent day or time was ever fixed in any more definite manner between defendant and complainant Buzard for considering and, if

possible, agreeing upon the terms and conditions of the said contemplated contract.

And for further answer in this behalf and by way of explanation, as necessary and expedient to this defence to be here inserted, this defendant says, in this immediate connection, that on the 31st day of October, 1881, he was in San Antonio for other purposes when he accidentally met said Buzard, and after some conversation on other subjects the matter of the said memorandum in some way
71 came up between them, when it was proposed to this defendant by the said Buzard that as both of them were now together they could settle their said matter without waiting for the time named by said Walker and said Buzard.

During this same meeting and conversation this defendant proposed, in immediate connection with the conversation concerning said memorandum, to said Buzard that he purchase from defendant a contract which he, the defendant, already had with one L. A. Mosty, of Lampasas county, Texas, who had been and then was extensively engaged in dealing in cattle. This defendant proposing to the said Buzard that he pay defendant $15,000.00, which he, defendant, had already advanced to said Mosty on said contract, and give him a note for the profits defendant was making on the said Mosty contract, payable when the cattle were delivered by Mosty to said Buzard, rating the cattle at the price of fifteen and $\frac{50}{100}$ dollars per head; and the said Buzard, after looking at and carefully reading said Mosty contract, asked defendant to give him until next day to look further into the matter and to make enquiries concerning it.

72 On the next day, it being the first day of November, 1881, the said Buzard, after again carefully reading over said Mosty contract and making himself familiar with its items, and fully understanding and considering the same, the said Buzard himself proposed to defendant to take an assignment of said Mosty contract upon the terms offered, if the defendant would guarantee the performance of said contract by the said Mosty; which this defendant refused to do. And defendant then proposed to said Buzard to abate twenty-five cents per head off the cattle if the said Buzard would, for that consideration, take the assignment of said contract and release defendant from all liability thereon—that is to say, that instead of rating said cattle at fifteen and $\frac{50}{100}$ dollars per head, they were to be rated at the price of fifteen and $\frac{25}{100}$ dollars per head, which arrangement, after being duly considered and well understood by the said Buzard, was accepted by said Buzard, and the transfer and assignment of said Mosty contract drawn up and signed, a copy of said transfer and assignment being correctly set out in complainants' bill; the said Buzard having, as the de-
73 fendant believed then and believes now, made in the meanwhile due inquiry about the matter.

The defendant, for further answer to the said complainants' bill of complaint, says he denies that the said contract entered into by and between the said complainants and this defendant, of date of first of November, 1881, set out in the complainants' bill of complaint,

was in lieu or in the place or in the stead of said informal memorandum of 14th October, 1881, above set forth in this answer; but on the contrary, this defendant says that during the said accidental meeting of this defendant and the said Buzard in San Antonio, on 31st October, 1881, above herein set forth, and after they had discoursed a short while on other matters, and after the said complainant, the said Buzard, had himself in the first instance broached the subject of their informal memorandum of the 14th day of October, 1881, this defendant, on the said 31st day of October, 1881, said to the said Buzard, while conversing with him in connection with the said informal and incomplete memorandum of 14th October,
74 1881, "I have a new and different proposition to make to you," this defendant meaning thereby and the said complainant, Buzard, understanding this defendant to mean that he had a new trade or new contract to make with the said Buzard independent of and without reference to the said contract contemplated by the said informal memorandum of October 14th, 1881, but on the basis of the said Mosty contract, above referred to and set forth correctly in the complainants' bill; that the said Buzard heard from this defendant a full statement of his new proposition for a new contract and carefully read and considered the said contract of the said Mosty with this defendant, and after reflection asked for further time, that he might consider the same and satisfy himself that the said Mosty contract was such as he was willing to be the assignee of, and after due and careful deliberation and in the exercise of his own judgment concluded to accept the same on the terms and conditions above set forth, and it was so agreed; and it was further agreed that the said informal memorandum of 14th October, 1881, should be surrendered to this defendant by the said Buzard
75 for cancellation, and that the five hundred dollars paid on the same should be placed as a credit on the new and different contract entered into.

The defendant, further answering the said bill of complaint, denies that he ever before or after the said assignment of the said Mosty contract to the said complainant, as above set forth, made any false or fraudulent representations of any character whatsoever to the said Buzard or to any one else as to the solvency or pecuniary condition of the said Mosty, or as to his (Mosty's) relations as a partner tothe said McAnulty.

The defendant, further answering, denies that any statements whatsoever made by this defendant or any one else to the said Buzard, either as to the solvency of the said Mosty or of his partnership with the said McAnulty, formed any inducement whatever to the said Buzard to make the said contract with this defendant as to the said Mosty cattle.

But that the said Buzard declined to rely on any statements made by this defendant, took time to consider the matters and inquire into the same, and finally acted upon his own judgement,
76 without relying upon the statements of this defendant or of any one else.

This defendant admits that during the progress of the negotia-

tions on the 31st of October and 1st of November, 1881, that this defendant more than once in the course of conversation between himself and said Buzard, and in response to the inquiries of the said complainant Buzard, replied to him, stating in substance the solvency of the said Mosty, and also stating his alleged partnership with the said McAnulty to the said complainant Buzard, but the defendant expressly denies that he made the statements as set forth in the complainants' bill on the subject of the solvency of the said Mosty and his ability to carry out his said contract and his partnership with the said McAnulty to the said complainant Buzard, or any one else, as facts within the personal knowledge of this defendant; nor were they so understood by the said Buzard, nor were they intended by this defendant to be so understood.

Defendant further answering in this behalf, says that while he expressly denies the averment made in the bill as to his stating as facts anything as of his own knowledge as to the solvency of
76½ the said Mosty, he says the true facts as to what passed between the said complainant and this defendant when the said contract was made, on 31st October and 1st November, 1881, are as follows, and are here repeated, being advised by counsel that their repeti-on in this connection is necessary and expedient to this defence.

This defendant denies that he at any time during said negotiation for the transfer of said contract with L. A. Mosty to complainants represented to said Buzard, or stated as a fact within the knowledge of defendant, that L. A. Mosty was as good or better than defendant, that L. A. Mosty was solvent and able to perform his contract, or that said Mosty had twelve hundred head of cattle in his rail or ranche brand, or that R. E. McAnulty was a partner of said Mosty and bound upon his, Mosty's, contract, but defendant admits that in this connection he did say to said Buzard, at some time during the progress of said negotiation, that he (the defendant) believed said Mosty to be good and solvent and able to perform his contracts.

That it was generally understood that said Mosty had handled over thirty thousand head of cattle during the season of 1880,
77 and that that was more cattle than he (defendant) had ever been able to handle.

That defendant also told said Buzard that said Mosty had told defendant that R. E. McAnulty was a partner with him in his cattle contracts. That during said conversation said Buzard said he did not want eastern Texas cattle, when the defendant said to him that Mosty had told him (defendant) that he (Mosty) had about twelve hundred head of cattle in his rail or ranch brand, and defendant supposed from this statement of Mosty that he, Mosty, expected to put these cattle in upon the defendant's contract, and that they were Lampasas cattle; but defendant says that this last conversation as to said cattle and their number had no reference to the solvency of said Mosty, but related solely to the character of cattle which said Buzard would probably receive upon said Mosty contract, and defendant believes and so states the fact to be that this conversation occurred after the assignment of the said Mosty contract had been made,

although he admits his recollection as to the time when it occurred is not perfectly accurate.

78 And for further answer defendant says that it was true that he at that time believed said L. A. Mosty to be good and solvent and able to perform his contracts; that it was true that he (defendant) believed said L. A. Mosty to be as good or better than he (the defendant) was. That it was publicly stated by many persons and believed by this defendant and many others that the said L. A. Mosty had handled over thirty thousand head of cattle and had made large profits thereon, and that it was true that defendant had never been able to handle such a large number of cattle. That it was generally known by many persons in Gonzales county, where defendant resides, that said Mosty was a large dealer in cattle and perfectly good for his contracts; and as evidence of this, defendant, and others of his friends and acquaintances in Gonzales county, had advanced to said Mosty large sums of money, amounting to thousands of dollars, upon contracts for the future delivery of cattle, requiring no security from the said Mosty for the same.

That defendant did believe, both at the time he made said contract with said Mosty and at the time he assigned the same to

79 complainant Buzard, that said Mosty was good and able and willing to perform his contract with this defendant.

Defendant denies that it was known to defendant at the time he assigned said contract to complainant, nor was it known to any one from whom defendant might have acquired the information, that Mosty was in fact at that time not in a condition to perform said (his) contract with defendant, but in fact at the time of the assignment of said contract to complainants that the said Mosty was generally regarded and believed to be solvent and able to perform his contracts, and the contrary was not known and could not have been known at the time to defendant when he assigned said contract to complainants by the use of any means of information at his command.

Defendant further says all the means and sources of information open to him as to said Mosty were also equally open to complainants for information in regard to the solvency of said L. A. Mosty; and that the defendant had no knowledge or information in regard to the solvency of said Mosty that he did not, in good faith, honestly and fully and truly then communicate to complainants.

80 Defendant further says that when he stated to complainants that L. A. Mosty had told him (defendant) that R. E. McAnulty was a partner with him, said Mosty, in his cattle contracts, that it was true that said Mosty had told him, defendant, and that defendant believed the same to be true, as stated by said Mosty.

Defendant says further that he is informed and believes that the statement made by said Mosty was, in fact, not false at the time it was made, and that said R. E. McAnulty was, in fact, at that time, to some extent, a partner with said Mosty in his, said Mosty's, cattle contracts; as to what were the exact conditions and limitations of said partnership this defendant was not advised, but he is informed

and believes, and so states the fact to be, that in August, 1881, some sort of partnership existed between the said Mosty and the said McAnulty.

Defendant further says that he is informed and believes that the said contract of partnership by and between said L. A. Mosty and R. E. McAnulty was made and entered into on or about the 10th day of August, 1881, and continued until about the 7th day
81 of October or 7th of November, 1881, and that on or about the 7th day of October or 7th of November, 1881, said parties dis-olved and attempted to settle said partnership by said Mosty assigning to said McAnulty all the assets of said partnership, amounting to about four thousand head of cattle, which had been bought by money advanced to said Mosty upon cattle contracts, and by assigning to said McAnulty contracts for the purchase of cattle made by the said Mosty, upon which said Mosty had advanced all or a part of the purchase money, which assets so turned over to said McAnulty defendant is informed and believes was reasonably worth from one hundred and twenty-five to one hundred and fifty thousand dollars.

Further answering in this behalf this defendant denies that he has resided near the said L. A. Mosty, and denies that he had any knowledge whatever of said Mosty's financial condition other than his general reputation at that time for solvency among stock men.

That defendant resided about 125 miles from where said Mosty resided and has carried on a business.

Defendant says that his own cattle business has been, to a
82 great extent, in Gonzales and the coast counties of Texas; that complainant, before entering into said contract with defendant, took such time as was desired by him to be taken to inquire into the solvency of said Mosty, and could have taken as much time as he desired to take, but the complainant having made all the inquiry he wished to make, and having obtained such information concerning Mosty and his said solvency as was regarded by him as sufficient, and having taken all the time he desired, and relying upon his judgement, and having been put fully in possession by this defendant of all the facts in his knowledge, acted in this matter for himself and on his own judgement.

And this defendant, for further answer, says he expressly denies that he ever, at any time, as an inducement to the said complainant Buzard, to enter into the contract of November 1st, 1881, or for any purpose, represented to the complainant Buzard that the said Mosty was good and solvent, and able to perform his said contract; that he was better than the defendant, and that the said Mosty, at the time, had twelve hundred — of cattle in the ranch or rail brand of said Mosty; that there was no doubt of the performance
83 of said contract, as R. E. McAnulty was a partner with the said Mosty in the performance of the same. And this defendant avers that a true, full, and complete statement of what in fact passed at the time of said negotiation of October 31st, 1881, and November 1st, 1881, between the defendant and the said Buzard, has been heretofore fully set forth in this present answer, and is referred to in this connection.

Defendant, further answering, expressly denies that at the time that he refused to guarantee the fulfilment of the Mosty contract, and when the said complainant agreed to release him from the said guaranty in consideration of this defendant deducting twenty-five cents per head on the number of said cattle, that he, this defendant, then and there reiterated, or in any other manner made any representation of his, or any one else, to said Buzard, that the said Mosty was good and solvent and able to perform the said contract—that he was as good and better than this said defendant; that said Mosty had twelve hundred head of cattle in his rail or ranch brand; that there was no doubt of the fulfilment of the contract; that R. E. McAnulty was *was* a partner with the said Mosty in the fulfilment of this contract.

84 But, on the contrary, this defendant denies the same and says that the averments in the bill to that effect are not true as alleged, but, on the contrary, this defendant avers that throughout the whole of said transaction with the said Buzard he acted in the utmost good faith, and on 31st October, 1881, and November 1st, 1881, he fully believed that the said Mosty was good and solvent, and had no notice or knowledge to the contrary, and in so stating his belief to Buzard was sincere and had no design or purpose to injure or deceive the said complainant or any one else, and that he never knew or heard of or had any reason to suspect the then insolvency of the said Mosty until some time after the said contract with the said complainant was made; and this defendant in this connection further says that at the time of the assignment of said contract on the 31st October, 1881, and 1st November, 1881, he firmly and honestly believed that the said Mosty was good and solvent and abundantly able and willing promptly and in the utmost good faith to carry out completely, both in letter and spirit, the terms of said contract; and in all his statements on this subject to the said complainant Buzard he acted in the utmost good faith and had

84½ he known at the time or had reason to suspect that the said Mosty was insolvent or unable to carry out fully his said contract, he would not have *have* assigned the same, but would have promptly taken such steps as he would have deemed best to secure his rights under said contract in whole or in part.

And now comes the said defendant and, for further answer, he denies the statements as set forth in the complainants' bill of complaint that the representation of the defendant that said Mosty was good and solvent and able to perform said contract for the delivery of said cows and bulls; that the said Mosty was as good or better than the defendant; that the said Mosty had twelve hundred head of cattle in his rail or ranch brand; that there was no doubt of the fulfilment of the contract, and that R. E. McAnulty was a partner of said Mosty in the transaction with the defendant, were at the time they were made absolutely untrue; that at the time aforesaid the said Mosty was wholly insolvent; that he was not as good or better

85 than the defendant; that he had no cattle whatever in his ranch or rail brand, or any cattle whatever, and that he

was totally unable, for want of solvency and credit, to perform said contract.

And further answering in this connection, he says he is informed and believes it to be true, and admits that on the 31st of October and 1st of November, 1881, the said Mosty was, in fact, insolvent, and not as good as this defendant; but he denies that he stated the contrary to said complainant Buzard, and he asserts the financial condition of the said Mosty at that time to have been as well and fully known to the complainant as to this defendant, and that defendant made no concealment or false or fraudulent statement of any kind whatsoever at that time or any other time to the said Buzard in regard to said matter or any other matter.

This defendant, further answering, says he expressly denies that he made any such false and fraudulent representations as to the said partnership relation of the said McAnulty to said Mosty to the said Buzard, as is alleged in said bill of complaint.

And this defendant further says that he denies the aver-
86 ment in the said bill as to said McAnulty never having been a partner of the said Mosty, and denies the same *is* absolutely untrue, and says he has been informed and believes, and so states the fact to be, that during the year 1881—some time in August, 1881—and prior to that date, and upon the 7th day of October or November, 1881, that the said McAnulty was, in fact, associated in the cattle business and largely interested therein with said Mosty; and he is informed and believes, and so states the fact to be, that a partnership of some kind in the cattle business did in fact exist between them, but the precise terms and conditions of the same are not known to this defendant; and in this connection this defendant expressly denies that he fraudulently or falsely represented to the said Buzard at any time whatever that such partnership existed He expressly denies that he stated to said Buzard as a fact that said partnership ever existed, and the averment in the bill to that effect is false and untrue; and he further denies that said Buzard relied upon any representations made to him by this defendant, of any kind whatever, either as to the partnership of the said Mc-
87 Anulty, or as to any other matter relating to the ability and capacity of the said Mosty to perform and carry out his said contract.

Defendant, further answering, expressly denies that he ever made any false representations to the said Buzard as to the solvency of the said Mosty.

This defendant, however, admits that from the facts that have come to his knowledge subsequent to said trade with said complainant Buzard, that the said Mosty, at the time of the assignment of the contract between said Mosty and defendant to complainant Buzard, by the defendant, was insolvent, and had no property subject to be taken by his creditors.

That on the seventh day of October, 1881, the said Mosty had sold and transferred all cattle and other interest in Texas and els-where of which any knowledge can be had, to R. E. McAnulty in payment or part payment of a debt he owed to said McAnulty of eighty thou-

sand dollars, or some other large sum, and the said McAnulty, before the assignment of the contract to complainant by the defendant, had taken possession of the property so sold and transferred by Mosty to him. But this defendant denies that he represented the con-
88 trary to be true or that he knew the said facts to exist in October 31st, 1881, and November 1st, 1881; the full facts as to the insolvency of the said Mosty, and when the same came first to the knowledge of this defendant, are set forth in the previous parts of this answer, and are referred to in this connection.

This defendant has no knowledge of when the said deed to the said McAnulty was recorded in Lampasas county, or whether it was recorded there at all, but he denies that it was recorded on the 7th, 8th, 9th, or 10th of October, 1881; and in this connection this defendant files herewith a copy of the final settlement of said Mosty and NcAnulty, marked Exhibit B, and prayed to be taken as part of this answer.

Defendant, further answering, says that all the terms of the said contract and of the whole cattle transaction between the said complainants and the defendant are in writing, and all the inducemetsn and consideration for the same moving from and to each party are fully and distinctly set forth therein; and he says that he has been advised by his solicitors that no parol statement made before or after the execution of said contract can be used to vary or change the written terms of the same.

89 Defendant, further answering, says that he is aadvised by counsel, and respectfully submits to the court, that this said court, sitting as a court of equity, cannot take cognizance or jurisdiction of the same, as it appears from all the averments of said bill and from this answer, that the said complainants, if they have in any way been injured or damaged, have a full complete and perfect remedy at law, and have their action on said contract, and show no grounds of equitable relief.

And this defendant, further answering to said bill of complaint, says he is advised and here suggests that the said complainants have in no manner suffered any damage or injury by reason of matters and things set up and alleged in said bill of complaint, and cannot have a decree for the same against this defendant.

And, further answering, this defendant says that, from the averments in said bill of complaints, it appears, and he is so advised, that the said L. A. Mosty is a proper and necessary party to said suit, and upon the advice of counsel he respectfully suggests in this behalf a want of parties defendant to said suit, by reason of
90 the failure of the said complainants to make the said Mosty a party defendant to the same.

And this defendant submits to this honorable court that each and all and every the matters in the said complainants' bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainants are not entitled to any relief from a court of equity, and this defendant hopes that he shall have the same benefit of this defence as if he had demurred to said complainants' bill.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in said complainants' bill of complaint contained material and necessary for this defendant to make answer unto, not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing
91 to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed and his reasonable costs and charges in this behalf most wrongfully sustained.

ROBERT A. HOUSTON,
Defendant.

HANCOCK & WEST,
Solicitors for Def't, West Pecan Street, Opposite Brunswick Hotel, Austin, Texas.

STATE OF TEXAS, *County of Bexar:*

No. 9. In Chancery.

On this the 3d day of August, A. D. 1882, personally appeared before me the above-named Robert A. Houston, and made oath that he has heard read the above and foregoing answer, and knows the contents of the same, and that the same has been subscribed by him, and that the said answer is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and as to those matters he believes them to be true.

ROBERT A. HOUSTON.

Subscribed and sworn to before me this 3d day of August, A. D. 1882.

GEORGE PASCHAL,
U. S. Commissioner, West. Dist. Texas.

92 Endorsed: In equity. No. 9. In U. S. c't c't Buzard and Hillard *vs.* Robert A. Houston. Further answer of defendant. Filed Aug. 4, 1882. W. C. Robards, cl'k, p'r D. Beall, deputy.

STATE OF TEXAS, *County of Tarrant:*

Agreement entered into by L. A. Mosty and R. E. McAnulty, this October 7th, 1881, at Fort Worth, Tarrant county, Texas.

Whereas L. A. Mosty acknowledged himself indebted to R. E. McAnulty in the sum of seventy thousand dollars for cash advanced him for purchase of cattle, and payment of which advances have been this day secured to R. E. McAnulty by the proper transfer to him by bill of sale of certain cattle contracts, rights, &c.;

And whereas, for the further and more full completion of contracts entered into by L. A. Mosty for purchase of cattle, the additional sum of twenty thousand dollars, or to that amount, became necessary:

Now, in consideration of the security already given by
93 said L. A. Mosty to R. E. McAnulty, and the further security of unconditional bills of sale of cattle yet to be purchased or paid for, said McAnulty agrees to furnish to said Mosty twenty thousand dollars, or to that amount, under the following conditions, viz:

All cattle to be transferred to R. E. McAnulty and all proceeds from sale of cattle to be applied to the payment of the secured debt of $70,000.00, and the payment of such part, or the whole, as the case may be, of the $20,000.00 additional advances to be made by McAnulty.

R. E. McAnulty agrees to accept as full remuneration for the use of such part of the advanced money as shall be paid prior to Jan'y 1st, 1882, interest thereon at rate of ten per cent. per annum from date of advances; and for such balance as may remain unpaid Jan'y 1st, 1882, he shall be entitled as remuneration for the use thereof from day of advance until final payment, which shall be made, as above set forth, out of the proceeds of sale, to one-half of the profits made on the cattle represented by the unpaid balance, and such share of profits shall include increase change of grades,
94 or any other source of revenue. Upon final settlement full release shall be given to L. A. Mosty.

It is further agreed that R. E. McAnulty shall accept as surety for payment of advance made to L. A. Mosty the ranche cattle of said Mosty, situated in Lampasas county, Texas, for such amount as they may mutually agree upon, and shall then release a like amount of the cattle billed to him and now on the road to the Panhandle of Texas.

This is to be understood that the ranche cattle shall be used at their agreed value to lessen the security given upon the cattle now on the road.

In witness whereof, we have hereto affixed our signatures, this Oct 7th, 1881, at Fort Worth, Texas.

L. A. MOSTY.
R. E. McANULTY.

STATE OF TEXAS, *County of Tarrant:*

Before me, Zane Cetti, notary public in and for Tarrant county, Texas, on this day personally appeared L. A. Mosty and R. E. McAnulty, to me well known to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me
95 that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 8th day of Oct., 1881.

ZANE CETTI,
Notary Public, Tarrant County, Texas.

THE STATE OF TEXAS, *County of Wheeler:*

I, W. L. R. Dickson, clerk of the county court in and for Wheeler county, State aforesaid, do hereby certify that the above and fore-

going agreement between L. A. Mosty and R. E. McAnulty, dated October 7th, A. D. 1881, is a true and correct copy of the original as it appears upon the record in my office, mortgage book I, pages 94 & 95.

Witness my hand and the seal of said court affixed, at office in Mobeetie, on this the 3d day of July, A. D. 1882.

W. L. R. DICKSON,
Clerk Co. Court, Wheeler Co., Texas.

Endorsed: Ch. No. 9. In U. S. c't c't. Buzard and Hillard *vs.* Robert A. Houston. Exhibit B. Filed Aug. 4, 1882. W. C. Robards, clerk, p'r D. Beall, deputy.

95½ Before the Circuit Court of the United States for the Western District of Texas, at San Antonio. In Chancery.

The replication of Benj. F. Buzard and Moses Hillard, complainants, to the answer of Robert A. Houston, defendant, to the bill of complaint of above complainants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say that, they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered thereunto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true.

All of which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

JNO. A. & N. O. GREEN,
Solicitors of Complainant.

Endorsed: Filed Aug. 7, 1882. W. C. Robards, clerk, per D. Beall, deputy.

96 In the Circuit Court of the United States within and for the Western District of Texas, at San Antonio. In Chancery.

BENJAMIN F. BUZARD and MOSES HILLIARD,
against
ROBERT A. HOUSTON. } No. 9.

To the Honorable E. B. Turner, judge of said court in vacation:

Your petitioners, Benjamin F. Buzard and Moses Hillard, complainants in the above-entitled cause, most respectfully represent and show unto your honor that the above-entitled cause is now at issue, and they being about to commence taking their testimony therein to be read on the trial thereof, have notified the defendant that they desire the evidence to be adduced in the cause to be taken orally according to rule 67. And further, they most respectfully represent unto your honor that to their knowledge there is no examiner

of said court residing at San Antonio, nor is there any such examiner residing contiguous thereto; and most respectfully ask
97 that your honor, without delay, appoint some suitable and proper person as special examiner in said cause before whom the testimony in said cause may be taken in accordance with rule 67.

The time for the taking of said testimony is fast expiring, and your petitioners most humbly pray that your honor may at once appoint some such person as special examiner.

JNO. A. & N. O. GREEN,
Solicitors for Complainants.

H. E. BARNARD,
Of Counsel.

Filed Sep. 19, 1882.

W. C. ROBARDS, *Cl'k.*

In the Circuit Court of the United States within and for the Western District of Texas, at San Antonio. In Chancery.

BENJ. F. BUZARD AND MOSES HILLARD
against
ROBERT A. HOUSTON. } No. 9.

Now this matter of the petition of Benjamin F. Buzard and Moses Hillard, wherein they ask and pray the appointment of some
98 suitable and proper person as a special examiner of this court to take the testimony in said cause, notice of the desire of said complainants to have the evidence therein to be adduced in the cause to be taken orally under rule 67, having been duly given to the defendant in said cause, came on for consideration before me in Chambers, this 16th day of September, A. D. 1882, and being fully advised, it is ordered that George Paschal be, and he is hereby, appointed by me to act as special examiner in said cause for the purpose of taking the testimony of both parties therein; such notice as to the time and place of taking said evidence as may be fixed by said special examiner, first being given, in accordance with rule 67.

E. B. TURNER,
U. S. Judge.

Endorsed: No. 9. In chancery. United States circuit court. Benj. F. Buzard *et al. vs.* Robert A. Houston. Petition and order for appointment of special examiner. Filed Sep. 19, 1882. W. C. Robards, cl'k.

99 Extract from the Minutes of the United States Circuit Court held at San Antonio, Tuesday, October 3d, 1882.

B. F. BUZARD AND MOSES HILLARD *vs.* ROB'T A. HOUSTON.

The appointment made in this case on the 19th September, 1882, of George Paschal as special examiner in this case is hereby revoked and annulled.

It is ordered by the court that George Paschal, Esq'r, of San An-

tonio, Texas, be appointed an examiner of this court, with power to take testimony in all cases in equity pending therein, as authorized and provided by rule 67 in equity.

100 In the U. S. Circuit Court for the Western District of Texas, at San Antonio. In Chancery

BENJ. F. BUZARD & MOSES HILLARD
vs.
ROBERT A. HOUSTON. } No. 9.

To the defendant, Robert A. Houston, or his solicitor, James F. Miller, Gonzales, Texas:

You will please take notice that the complainants in the above-mentioned cause desire the evidence to be adduced in said cause shall be taken orally, as provided in rule 67 of the rules in equity, before an examiner (there being no examiner for the court), to be specially appointed by the Hon. E. B. Turner, one of the judges of the circuit court of the United States for the western district of Texas, application for which appointment has been made by the complainants.

BENJ. F. BUZARD,
MOSES HILLARD,
By their solicitors, JNO. A. & N. O. GREEN.
H. E. BARNARD.

[Endorsed:] No. 9. Benj. F. Buzard & Moses Hillard *vs.*
101 Robert A. Houston. Notice as to testimony. Service of within notice accepted. Hancock & West, for Houston. Filed Oct. 3d, 1882. W. C. Robards, cl'k. Jno. A. & N. O. Green, H. E. Barnard, sol. for compl'ts.

In the United States Circuit Court for the Western District of Texas, at San Antonio. In Chancery.

BENJAMIN F. BUZARD AND MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON. } No. 9.

In the above-named case it is ordered that the testimony of the complainants' witnesses be taken, commencing at 10 o'clock on the 20th October, 1882, at my office in San Antonio, Texas, continuing from day to day till the same shall be concluded, and that ten days' notice of the time and place of taking said testimony, and the names of the witnesses of complainants to be examined, be given to the defendant or his solicitors of record.

GEORGE PASCHAL,
Examiner in Equity.

San Antonio, Texas, October 4, 1882.

102 Endorsed: No. 9. Benjamin F. Buzard & Moses Hillard *vs.* Robert A. Houston. In equity. Order by examiner to take depositions. Filed Oct. 4, 1882. W. C. Robards, cl'k, by W. McMaster, dep'ty.

In the Circuit Court of the Western District of Texas, at San Antonio.
In Chancery.

BENJAMIN F. BUZARD & MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON. } No. 9.

To Robert A. Houston, the defendant, or his solicitors of record, James F. Miller and Hancock & West:

You will take notice that, in accordance with an order made by George Paschal, the examiner in equity in said court, the plaintiffs in the above cause will proceed to take the testimony of Benjamin F. Buzard, D. W. Hinkle, Alonzo Millett, Thomas Davis, John Gammel, R. E. McAnulty, and George Littlefield, to be read in
103 evidence in behalf of the plaintiffs upon the trial of this cause.

Said testimony will be taken in the city of San Antonio, Texas, at the office of George Paschal, orally, as provided by rule 67, to be commenced at 10 o'clock in the forenoon of the 20th day of October, 1882.

JNO. A. & N. O. GREEN,
Solicitors for Complainants.

H. E. BARNARD,
Of Counsel.

Endorsed: No. 9. In ch'c'y. Buzard & Hillard *vs.* Robert A. Houston. Notice by pl'ff- as to taking testimony. Filed Oct. 5th, 1882. W. C. Robards, cl'k, by W. McMaster, dep'ty.

Rec'd in office Oct. 4th, 1882, at 6 o'clock p. m., and served Oct. 5th, '82, at 2 o'clock p. m., by delivering to Jno. Hancock, of the firm of Hancock & West, att'ys for def't, in person a copy of this notice.

HAL. GOSLING,
U. S. Marshal, W. D. T.

104 *Agreement as to Taking Testimony.*

SAN ANTONIO, TEXAS, *October* 31*st*, 10 o'clock a. m.

The depositions in this cause was then resumed pursuant to the foregoing adjournment and agreement.

It was then agreed between both parties to this suit that all evidence taken in this cause and returned to this court on or before January rule day, 1883, may be read in evidence on the hearing of this cause, subject to all legal objections, except the objection to the time of taking the same, whether the testimony be taken before the examiner of this court or upon written interrogatories after legal notice, in accordance with the practice of the State of Texas. That same may be taken before any officer authorized to take *de bene esse* depositions.

H. E. BARNARD,
Counsel for Compl'ts.
J. WAELDER &
HANCOCK & WEST,
Sol's for Def't.

105 In Circuit Court of United States for Western Dist. Texas, at San Antonio. In Chancery.

BENJ. F. BUZARD & MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON, Defendant. } No. 9.

In the above cause it is agreed that the time for taking testimony by either party shall be extended till the first Monday in February, 1883. This 9th day of December, 1882.

JNO. A. & N. O. GREEN,
Solicitors for Complainants.
HANCOCK & WEST &
WAELDER & UPSON,
Solicitors for Def't.

Endorsed: U. S. circuit ct. In chancery. No. 9. Benj. F. Buzard *et al. vs.* Rob't A. Houston. Agreement extending time for taking testimony to first Monday in Feb'y, 1883. Filed Dec'r 11, 1882. W. C. Robards, cl'k, by W. McMaster, dep'ty.

106 In United States Circ't Court for West. Dis't Texas, at San Antonio. In Chancery.

BENJ. F. BUZARD & MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON, Defendant. } No. 9.

In the above named case it is agreed by and between the counsel for the complainants and the defendant that all testimony of witnesses desired by either of said parties may be taken and returned in the manner and by the officers provided by the laws of the State of Texas for the taking and returning of depositions in the district court of said State.

This agreement shall in no manner interfere with any other legal mode for taking depositions in the circuit court of the United States.

The above agreement shall authorize the clerk of the court to issue commissions and attach a copy of the agreement thereto.

JNO. A. & N. O. GREEN,
Solicitors for Complainants.
HANCOCK & WEST &
WAELDER & UPSON,
Solicitors for Def't.

107 Endorsed: No. 9. U. S. circuit court. In ch'c'y. Benj. F. Buzard & Moses Hillard, compl'ts, *vs.* Robert A. Houston, def't. Agreement in respect to taking testimony. Filed Dec'r 11, '82. W. C. Robards, cl'k, by W. McMasters, dep'ty.

In U. S. Circuit for West. Dist., Texas, at San Antonio. In Chancery.

BENJ. F. BUZARD & MOSES HILLARD, Compl'ts,
vs.
ROBERT A. HOUSTON, Def't. } No. 9.

In this case it is agreed the clerk of the U. S. circuit court may issue a commission to take *take* the testimony of Walter Acker to Travis county, Texas, or any other county where he may be found.

JNO. A. & N. O. GREEN,
Sol. for Complainants.
JOHN HANCOCK &
WAELDER & UPSON,
Sol's for Def't.

Endorsed: No. 9. Chanc'y. Benj. F. Buzard & M. Hillard *vs* Rob't A. Houston. Filed Jan'y 3d, '82. W. C. Robards, cl'k, by D. Beall, dep'ty.

108 In the U. S. Circ't Court for West. Dist. Texas, at San Antonio. In Chancery.

BENJ. F. BUZARD & MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON, Defendant. } No. 9.

To the Hon. E. B. Turner, judge of the circuit court of the U. States for the western district of Texas, at San Antonio.

The complainants in the above-entitled cause respectfully represents to your honor that the replication of the complainants in the said cause to the answer of the defendant was filed in said cause on the 7th day of August, 1882, on the rule day for said month of August, 1882, and this cause was at issue from that time. That before the three months allowed for taking testimony had expired, by agreement between the solicitors for the complainants and the defendant, the time for taking testimony was extended till the first Monday in January, 1883, and that before the first Monday in Jan'y, 1883, to wit, on the 9th day of December, 1882, by an agreement between the solicitors of the complainants and the defendant, the time for taking testimony was extended till the first Monday
109 in February, 1883, all of which will be shown by the papers on file in your honor's court. And complainants show that the time for taking testimony has expired; that much testimony has been taking which remains unpublished. Complainants therefore ask that your honor shall order the publication of all testimony taken in said cause, that the hearing of the said cause may be speeded; and complainants will ever pray, &c.

JNO. A. & N. O. GREEN,
H. E. BARNARD,
Solicitors for Complainants.

To WAELDER & UPSON & JOHN HANCOCK,
Solicitors for the Defendant in the above-named cause, R. A. Houston:

Take notice, on the 24 day of February, 1883, at chambers, at

Austin, Texas, the complainants will apply to the Hon. E. B. Turner, judge of the United States circuit court for the western district of Texas, for an order for the publication of all testimony taken on file in the case of Benj. F. Buzard & Moses Hillard against Robert A. Houston, in the circuit court of the United States for the western district of Texas, at San Antonio, in chancery, in accordance with rule 67, in equity.

JNO. A. & N. O. GREEN,
H. E. BARNARD,
Solicitors for Complainants.

110 AT CHAMBERS, AT AUSTIN, TEXAS,
Feb'y 24th, 1883.

BENJ. F. BUZARD & MOSES HILLARD
vs.
ROBERT A. HOUSTON. } No. 9.

In the above-named cause, it appearing that due notice has been given to the solicitors for the defendants, upon the application of the complainants, it is ordered that publication of the testimony taken in said cause be made in the clerk's office of the United States circuit court for the western district of Texas, at San Antonio, by the clerk thereof.

E. B. TURNER, *Judge.*

Endorsed: Ch'y. No. 9. Benj. F. Buzard & Moses Hillard *vs.* Robert A. Houston. Application for publication of testimony. Notice and order of judge. Filed Feb'y 27, 1883. W. C. Robards, cl'k, p'r D. Beall, dep'ty. Served on me this 16th day of Feb'y, 1883. Jacob Waelder, proctor for d'f't.

111 In Chancery. In the United States Circuit Court for the Western District of Texas, at San Antonio.

BENJ. F. BUZARD & MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON, Defendant. } No. 9.

To the defendant, Robert A. Houston, or his solicitors, Hancock & West and Waelder & Upson.

Take notice that this cause will be brought to a hearing on bill, answer, exhibits, and proof before the honorable circuit court of the United States for the western district of Texas, sitting in equity, on the 19th day of March, 1883, at 10 o'clock a. m., or as soon as counsel can be heard.

JNO. A. & N. O. GREEN,
H. E. BARNARD,
Solicitors for Complainants.

Endorsed: No. 9. Ch'c'y. Benj. F. Buzard & Moses Hillard, compl'ts, *vs.* Rob't A. Houston, def't. Notice of hearing. Filed Feb'y 27, 1883. W. C. Robards, cl'k, p'r D. Beall, dep'ty.

112 In the Circuit Court of the United States for the Western District of Texas, at San Antonio. In Chancery.

BENJAMIN F. BUZARD & MOSES HILLARD
vs.
ROBERT A. HOUSTON. } No. 9.

To the hon. the circuit court of the U. S. for the western district [of] Texas, now in session at San Antonio:

The defendant in the above-entitled cause respectfully represents to the honorable court that this cause has been at issue, as stated in complainants' application for the publication of this testimony, since the 7th day of August, 1882, and that the time for taking testimony was, by agreements, extended to the first Monday of February, 1883, (as also stated in said application,) said first Monday being the fifth day of the month; that complainants' application for publication of all the testimony was heard before the Hon. E. B. Turner, and by him granted on the 24th day of February, 1883, and that, in accordance with the order of publication, the testimony has been published, with the exception of the testimony of Henry Heath, whose depositions were mailed at Bennett, in Red River county,
113 Texas, on the fifth day of February, 1883, and filed on the 8th of said month, and which testimony remains unpublished. Defendant therefore prays that the same may now be published by an order to that effect. And defendant will ever pray, &c.

WAELDER & UPSON,
Solicitors for D'f't.

To Mess. Jno. A. & N. O. Green and H. E. Barnard, solicitors for the complainants in above-named cause:

Please take notice that on the 17th day of March, 1883, the defendant will ask the honorable the circuit court of the United States, now sitting at San Antonio, to order the publication of the testimony of Henry Heath, whose depositions were taken and filed as set forth in the foregoing application, in order that all the testimony may be published in accordance with your application granted on the 24th of February, 1883.

WAELDER & UPSON,
Solicitors for Def't.

Endorsed: No. 9. In chancery. Buzard & Hillard *vs.* Rob-
114 ert A. Houston. Application for the publication of the testimony of Henry Heath. Accepted service this 14 March, 1883. Jno. A. & N. O. Green, sols. for compl's. Filed M'ch 14, 1883. W. C. Robards, cl'k, p'r D. Beall, dep'ty.

In the Circuit Court of the United States for the Western Dist. Texas, at San Antonio. In Chancery.

BUZARD & HILLARD
vs.
ROBERT A. HOUSTON. } No. 9.

To the honorable the judges of said circuit court:

The defendant in the above-entitled cause presents this his appli-

cation for a postponement of the hearing of said cause, and for time to take the testimony of L. A. Mosty and Hanck Criswell, for the reasons stated in the affidavit of the defendant hereto annexed; and he will ever pray, &c.

WAELDER & UPSON,
Solicitors for Def't.

115 Mess. J. A. & N. O. GREEN and H. C. BARNARD,
Solicitors for Complainants:

Will please take notice that the defendant will present his above application to the circuit court now in session on the 22d day of March, 1883, or as soon thereafter as the court can hear the same.

WAELDER & UPSON,
Solicitors for D'f'd.

In the Circuit Court of the United States for the Western District of Texas, at San Antonio. In Chancery.

BUZARD & HILLARD
vs.
ROBERT A. HOUSTON. } No. 9.

Robert A. Houston, the defendant in the above-entitled cause, being duly sworn, deposes and says that L. A. Mosty, of the county of Lampasas, in the State [of] Texas, and Hanck Creswell, of Mobeetie, in the county of Wheeler, State of Texas, are material witnesses for the defense, whose testimony has not been taken; that both of said witnesses, as this deponent is informed and believes, will testify that on or about the 10th day of August, 1881, the said Mosty and R. E. McAnulty formed a partnership at Mobeetie to buy
116 and sell steer cattle; that the said McAnulty and the said Mosty and the said Creswell traveled together to Dodge City, in the State of Kansas, where they met this deponent, R. A. Houston, and one Geo. W. Littlefield, who wished to buy female cattle, whereupon the said Mosty and the said McAnulty extended their partnership, formed as aforesaid, to the purchase and sale of female cattle, with the understanding that the partnership agreement should be reduced to writing upon the arrival of the said Mosty and McAnulty at Kansas City, in the State of Missouri; that the contract between Mosty and this deponent for the cattle which form the subject-matter of this suit, was made on the 15th day of August, 1881, and the partnership contract between Mosty and McAnulty was reduced to writing on the 17th day of August, 1881. Deponent says that the testimony above stated is material, for the reason that the partnership between the said Mosty and the said McAnulty is one of the issues in this cause.

Deponent further says that he sued out a commission to take the deposition of the said L. A. Mosty to interrogatories and cross-interrogatories attached to said commission on or about the 27th
117 day of December, 1882, and sent the same to the county of Lampasas, to an officer authorized to take the depositions of witnesses; that the said commission was returned to him by said

officer on or about the first day of February, 1883, with the information that said Mosty was absent from his home and the State; that deponent learned on or about the 16th of February, 1883, that said Mosty had returned to the State, but did not learn his whereabouts at that time, when the time fixed by agreement of the parties for the taking of testimony had expired, and that, not knowing the whereabouts of said Mosty, he could not then apply for an extension of the time of taking testimony, the complainants' solicitors having refused to — any extension when requested so to do.

Deponent further says that he did not know or learn of the testimony of the aforesaid Creswell until three days ago, when he was for the first time informed that the said Creswell had any knowledge of the matters and things hereinbefore stated, or that he could testify to the same, and that he knows of no diligence by which he could have ascertained what said Creswell could testify.

118 Deponent further says that if the hearing of this cause can be postponed, and a reasonable time given him to take the testimony of the said Creswell and the said Mosty, he expects to prove the facts above stated by them.

Deponent also states, on his oath aforesaid, that this affiadavit and his application for postponement and time are not made for delay, but that justice may be done.

ROB'T A. HOUSTON.

Sworn to & subscribed before me, this 20th day — March, A. D. 1883.

W. C. ROBARDS, *Cl'k*,
Per D. BEALL, *Dept'y*.

Endorsed: No. 9. In chancery. Buzard and Hillard *vs.* Robert A. Houston. Application for postponement and time to take testimony. Service accepted March 20, 1883. Jno. A. & N. O. Green, sol. for compl'ts. Filed Mar. 20, 1883. W. C. Robards, cl'k.

119 In the United States Circuit Court for the Western District of Texas, at San Antonio. In Chancery.

BENJAMIN F. BUZARD and MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON, Defendant. } No. 9.

Be it remembered that on the hearing of this cause there was introduced and read by the complainants and the defendant the following evidence:

First. The complainant- offered and read the evidence of the following witnesses; said evidence having been taken before George Paschal, examiner in equity, of the circuit court of the United States for the western district of Texas, at San Antonio, on the 20th, 21st, 23d, 24th, and 31st of October, and 1st, 2nd, and third of November, 1882, and the 3d day of February, 1883.

First, the complainants offered and read the depositions of Benjamin F. Buzard, a witness for the complainants, taken before said

examiner, with the exhibits attached and referred to, which deposition and exhibits are as follows:

120 In the Circuit Court of the United States for the Western District of Texas, at San Antonio. In Equity.

BENJAMIN F. BUZARD and MOSES HILLARD
versus
ROBERT A. HOUSTON. } No. 9.

Be it remembered that on the 20th, 21st, 23d, 24th, and 31st day of October, and 1st, 2nd, and 3d days of November, A. D. 1882, and the 3d day of February, A. D. 1883, before me, an examiner in equity appointed by the circuit court of the United States within and for the western district of Texas, in the fifth circuit, in the city of San Antonio, in the county of Bexar and State aforesaid, and within the said western district of Texas, between the usual hours of business, were produced and personally came before me Benjamin F. Buzard, Alonzo Millett, D. W. Hinkle, Thomas Dewees, and John Gamel, witnesses for the plaintiffs, and G. N. Dilworth, L. G. Robinson, S. R. Walker, R. A. Houston, and G. W. Littlefield and Felix G. Smith, witnesses for the defendants, to depose in a civil
121 cause depending in the circuit court of the United States for the western district of Texas, held at San Antonio, in the last said district, on the equity side of said court, wherein Benjamin F. Buzard and Moses Hillard are plaintiffs and Robert A. Houston is defendant.

And the said Benjamin F. Buzard, Alonzo Millett, D. W. Hinkle, Thomas Dewees, John Gamel, G. N. Dilworth, L. G. Robinson, S. R. Walker, R. A. Houston, G. W. Littlefield, and F. G. Smith, being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn, on their respective corporal oaths, to testify the whole truth touching the matters in controversy in said civil cause, respectfully depose and say as follows:

BENJAMIN F. BUZARD, a witness for the plaintiffs, was then produced and duly sworn, and testifies as follows upon direct examination:

My name is Benjamin F. Buzard; I am forty-two years of age; I reside at St. Joseph, Missouri; I am one of the plaintiffs in this case; the other plaintiff is Moses Hillard, a resident of St. Louis,
122 Missouri; I am in the ranching and stock business on the Nueces river, in Zavalla county, Texas; the tracts of land upon which I am ranching are the Pedro Jose Aquierri and Antonio de Aquierri tracts, containing about eighty-one thousand acres; I began this business when a part of the land was purchased, which was in July, 1881; I have purchased a part since; my object in purchasing the land was to establish a ranch to raise cattle; I began my purchase of cattle in October, 1881; I was purchasing principally she cattle—cows.

(The defendant's counsel here objected to the witness giving any

testimony in the matter in dispute between the parties, upon the ground that it is illegal and improper, and that he is incompetent to testify.)

The witness then proceeded to testify as follows:

I made a contract with Mr. R. A. Houston, in October, 1881, for fifteen hundred head of cows.

(The defendant here objected to all parol evidence of the contract, because the contract is on file in this cause, and is in writing, and speaks for itself, and is dated October the 14th, 1881, and for the further reason that the pleadings of both parties show the
123 contract to be in writing and of the date of the 14th October, 1881.)

The witness then continued, as follows:

(A paper was here shown the witness, marked Exhibit "A" to defendant's further answer, and filed on August 4th, 1882, by W. C. Robards, clerk, per D. Beall, deputy, and the witness, after examining the same, said:)

This is the memorandum contract made between Mr. Houston and myself for fifteen hundred cows and some bulls. I made this contract in behalf of Buzard and Hillard, the plaintiffs in this suit.

The contract is in the handwriting of Major D. W. Hinkle; he drew the contract. The cows mentioned in the contract were wanted for the purpose of putting them on the ranche for breeding purposes.

The defendant knew the purposes for which they were wanted.

The circumstances under which the contract was made were as follows: Mr. Hinkle stated to me that he had a party who had a large lot of cows and cattle for sale, such as I wanted, and brought Mr. Houston and introduced him to me, and then we talked over the trade, and — asked him about the quantity of cattle and price,
124 and made this agreement: that he would sell me fifteen hundred head of cows and some bulls that were in the lot, I don't know that the number were mentioned at that time, for fifteen dollars and fifty cents per head, to be delivered on or about the first of May, 1882, at or near Lampasas, Texas.

The cattle were to be between the ages of three and eight years old, on which I was to pay in advance fifty per cent. when this contract was completed, and the balance when the cattle were delivered. We agreed at that time—it was very late at night—to have a memorandum contract made and meet in San Antonio a few days later, I think three or four days later, and complete the contract, at which time I was to pay over the advance on the cattle. I don't remember the date we were to meet—my impression is it was about the 17th of October; there was a particular day set for us to meet. We then had Major Hinkle draw the contract before referred to, and *and* signed it and had it witnessed and placed it in Major Hinckle's hands for him to hold until the day appointed for us to finish the contract. At the time the memorandum contract was made I paid him (Houston) five hundred dollars on the contract. On the day appointed for us to meet, which was at Major Hinckle's office, in
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San Antonio, I was at the place appointed ready to complete my contract.

Mr. Houston did not come, but sent a man named Walker, whose initials I do not remember, to inform me that Mr. Houston was sick and unable to meet me at that time; Mr. Walker stated that Mr. Houston would agree to meet me at any time that Walker and myself might arrange to finish the contract. We agreed, as I was going to leave town the following day to be absent several weeks, that on my return I should notify him (Houston) by telegraph, and he would come to San Antonio and meet me. On my return to San Antonio, about the 31st of October, 1881, I met Mr. Houston, and, after talking over the matter of our contract, on that evening he agreed to meet me next morning at Major Hinckle's office and complete the contract. After some further talk about the matter on the same evening of October the 31 Mr. Houston proposed that, instead of completing the contract as we had agreed upon—

(The defendant here objected to the witness giving any testi-
126 mony of the assignment and transfer to him of the L. A. Mosty contract, because the pleadings of both parties show that the said Mosty contract, as well as the assignment and transfer of it to the complainant, are in writing; and for the further reason that the witness being complainant is not competent to testify on the subject, and because it is an attempt to contradict by parol a written agreement between the parties.)

The witness then continued as follows: To transfer a contract between him, Houston, and Mosty for about the same number of cattle—about fifteen hundred head of cows and fifty bulls. He stated that they were the same cattle he had sold me, and that at the time he would have those cattle to deliver he would be very busy putting up cattle in another part of the State, and that it would be almost impossible for him to be there at that time.

That he would have to receive the cattle from Mr. Mosty and then immediately turn them over to me, and that I could just as well receive them from Mosty as he could. He then handed me the contract between him and Mosty, and, after reading the contract
127 over, I answered that I would see about it in the morning.

We had some further talk about the matter that evening and then separated, and met next morning, November 1st.

On the evening of October 31st he stated that the contract was good; that Mr. Mosty was a large dealer in cattle and fully able to fill the contract.

On the morning of November 1st we met in Major Hinckle's office, when Mr. Houston again urged the transfer of the Mosty contract, and that it would be impossible for him to be in Lampasas at the time to receive and deliver the cattle, and that if I would take that contract instead of completing the contract as we had agreed, and pay him fifteen thousand dollars that he had advanced to Mosty on the contract, he would let me have the cattle at fifteen dollars and twenty-five cents per head, and me pay him the difference between his contract with Mosty and fifteen dollars and a quarter,

which would be one dollar and twenty-five cents per head; that he would be satisfied with making that profit on the contract by not having to go and handle the cattle. Houston gave as a reason for wishing to change the contract that he was handling so many cattle,
and was so busily engaged all the time, that it would be
128 almost impossible for him to go and receive these cattle. He
also stated that it would be an expense of going there to receive the cattle, and the loss of time to him would be about as much as twenty-five cents a head

When Houston made this proposition, on the morning of November the 1st, I objected to taking the assignment of the Mosty contract for the reason that I did not know Mosty or his financial standing. Houston assured me that Mosty was good and solvent and able to fill the contract, and that R. E. McAnulty was the partner of Mosty, and that he was also good. He said McAnulty was Mosty's partner in this contract.

Houston stated that Mosty was good and handled more cattle than he (Houston) did, and more able to fill his contracts than he was. I was satisfied that McAnulty was solvent. I knew of his solvency. I then stated to Houston I would take that contract if he would guarantee the fulfilment of it; he said he would not guarantee that
or any other man's contract, and again asserted that Mosty
129 was good and McAnulty also, and asked Major Hinkle if such was not the fact.

I asked Hinkle what he knew about the parties. He said he considered Mosty good, and that R. E. McAnulty was as good financially as any cattle-man in the State, and that if McNulty was Mosty's partner in that contract he didn't think a better contract could be made.

Houston stated then that he knew McAnulty was a partner, as McAnulty had told him so, and there would be no question about the fulfillment of the contract, and, he again repeated, his only reason for wanting to assign that contract instead of completing the other was his inability to go and receive the stock; that he knew Mosty had most of the cattle then on the range; that about twelve hundred of the cows was Mosty's own ranche cows, with Mosty's rail brand on them; that the balance of the cows was already bought by Mosty, or would be bought by him in Lampasas county, and all would be ready to be delivered on or about the first of May, 1882.

I then said to Mr. Houston that I did not know if Mosty was
130 good or not, but that I knew he (Houston) was, and that if the representations were as he made them I would take his word for it and take the assignment of the Mosty contract instead of the contract we had agreed on; that I would pay him, then, at that time the fifteen thousand dollars he had advanced on the contract, and would give him our obligation for the dollar and a quarter per head to be paid when the cattle were delivered, and pay the balance due on the cattle at the same time; which was agreed to by Mr. Houston. Major Hinkle then took the memorandum contract from the desk and handed it to Mr. Houston, with the remark, "I do not think you gentlemen have any further use for this."

Mr. Houston took the papers—the memorandum, contract, and other papers—and put them in his pocket. We then went to the office of Mr. Felix Smith, I think, who wrote the assignment on the contract. (A paper was here handed the witness purporting to be a contract between Mosty and the defendant Houston, together
131 with the assignment of R. A. Houston to the plaintiffs thereon, who, after examining the same, said:) This is the Mosty contract and the assignment thereon to which I have referred in my testimony, and is the same which was handed to me by Mr. Houston at that time. (The paper is hereto attached and marked "Exhibit A;" see pages 284 to 286.) Two papers were here handed the witness purporting to be, first, a receipt from L. A. Mosty to R. A. Houston for five thousand dollars, dated August 19th, 1881; second, a letter from L. A. Mosty, dated Dallas, Texas, Sept. 28th, 1881, to R. A. Houston, advising him that he had drawn on him for eight thousand five hundred dollars, and the witness, after examining the same, said:) These papers were delivered to me by Mr. Houston at the same time he assigned the Mosty contract to me, and were given to me in order to show that he had paid Mosty the fifteen thousand dollars on the contract. (The papers are hereto attached and marked Exhibit "B" and "C," respectively. See page 287.) When the assignment was made I gave Mr. Houston a draft payable at the bank of Thornton & Lockwood, payable sixteen days after date, I
132 think, for fourteen thousand five hundred dollars. On the night before, in talking over the matter of the contract with Mr. Houston, I said that so long a time had elapsed since we were to close the contract that I had used the money intended for him in the purchase of other cattle, and that I would have to give him a time draft to enable my partner, Captain Hillard, to place funds to my credit, which would be done in a few days. He said he would accept it in that way, and that it made no difference to him, as he did not need the money then. I gave him the draft in that way, due on the 16th or sixteen days after date, for fourteen thousand five hundred, which, with the five hundred previously paid him, made fifteen thousand dollars, and I gave him our obligation for the dollar and a quarter a head, payable when the cattle under the Mosty contract were delivered. Mr. Houston the following day discounted the draft at Thornton and Lockwood's. I know this from Lock-
133 wood asking me if the draft was all right, and he stated he had discounted it for Mr. Houston. I told Mr. Lockwood the draft was good, and that it would be paid when it became due, and it was so paid by us.

The reason why I accepted the contract from Houston in the way I did was because I considered the representations he had made regarding Mosty's and McAnulty's solvency and financial standing were true, and because I believed his statement that McAnulty was a partner in the contract was true. I considered Mr. Houston as reliable and relied on his statement of the facts in regard to the matter, and also on the statements of Major G. W. Hinkle. If these representations had not have been made by Houston I would not have accepted the assignment of the contract.

After this transaction was completed I went to the ranche in Zavalla county, and on the 9th or 10th of November I received a telegram from San Antonio, sent by Mr. W. S. Carothers, notifying me that Mosty was reported broke. In answer to his telegram I came to San Antonio, and upon inquiry found that it
134 was generally reported that Mr. Mosty had failed. I went to Austin and upon consulting my attorney, Mr. Green, I at once went to Lampasas, the home of Mr. Mosty. I here found upon investigation that Mr. Mosty was insolvent and had transferred all of the property out of his hands early in October, and I could find no evidence of Mr. McAnulty being a partner in this contract. The transfer of the property had been made by Mosty to R. E. McAnulty, and the property was then partly in the possession of McAnulty and partly in the possession of George W. Littlefield. I found there was no property I could get, and that there was no way of getting any money from Mr. Mosty, that his transfer of property had been made some time before the assignment of that contract to me, so I then returned and went to Gonzales and saw Mr. Houston. I stated to him what I knew in reference to Mosty's insolvency, and asked him to either fill the contract or return us the amount of money
135 paid him, which he refused to do. I started the same day that I received notice of Mosty's insolvency, which was about the 9th or 10th of November, and got to Lampasas about three days later, which was about the 13th. I returned at once from Lampasas and reached Gonzales about two days later, about the 16th or 17th of November, 1881. McAnulty's home, I think, was in or near Bellville, in Austin county, at the time the assignment of the Mosty contract was made; he was a cattle dealer; and Mosty's place of residence was near Lampasas, Lampasas county, at that time.

Cross-examination:

The witness then continued to testify upon cross-examination as follows:

I made my first visit to Texas about five years ago, in 1877, I think. I was then living in Missouri. I was engaged in Missouri principally in the printing business. I was so engaged previous to 1877, and am yet. While living in Missouri I had paid attention to the cattle business. I have had a cattle ranche in Kansas
136 and the Indian Territory for the last eight years. My cattle ranche in Kansas I have abandoned, and moved my cattle to the Indian Territory. My ranche in the Indian Territory is situated near Salt Fork, south of the county of Harper, Kansas, near the Kansas line. The ranche which I abandoned in Kansas was in Harper county, about twenty miles north of my present ranche.

During the eight years in which I have been in the cattle business I have frequently been to Fort Dodge and Caldwell, Kansas, and to Cheyenne, in Wyoming Territory, and to all the principal places where Texas cattle men make their drives. I have met a great many Texas cattle men at these places and have seen their cattle. I have had cattle dealing within the State of Texas during those eight years.

Previous to 1881 my cattle dealing in Texas extended to the

northern part of the State, in Jack, Tarrant, Fannin, Hunt, Kaufman, and Hopkins counties.

I cannot remember the others, but there were others. I have partners in my land purchase in Zavalla county, Texas.
137 They are Moses Hillard and Joseph S. Nauson. They are also interested with me in the cattle business I am carrying on there. There are no other persons interested in this cattle business here, unless you would consider Mr. Barnard interested, who is acting for his father-in-law, Captain Nauson.

We have all equal interests in the business. Mr. Barnard has no individual interest in the cattle other than that represented by Captain Nauson.

The land was purchased, or the first forty thousand acres of it was purchased, in 1881 by Mr. Hillard, Mr. Barnard, and myself the balance was subsequently purchased by Captain Hillard, Mr. Nuason, and myself. (The plaintiffs' counsel here objected to all testimony in reference to the partnership in the land and cattle as above, because the questions and answers are not material to the issues involved in this suit.) The witness then proceeded as follows:

I am a citizen of the State of Missouri; my family reside
138 there; Mr. Hillard and Mr. Nauson are also citizens of Missouri.

Question. What state is Mr. Barnard a citizen of?

(The plaintiffs' counsel objected to the question, it is not material to the issues involved in this suit.)

Answer. He resides in Texas, and I presume, under the law, he would be a citizen of this State. He resides here with his family and is practicing law.

When I met Mr. Houston in San Antonio, on October the 31st, it was accidental and not pre-arranged. When I met Mr. Houston on October 31st we had no conversation about other matters except about the cattle trade, and except the usual compliments. He regretted his inability to meet me at the previous appointed time, and Mr. Houston said, We are both here now and can go on and fix the matter up. It was arranged between Mr. Walker and myself that when I returned to San Antonio that I was to telegraph to Mr. Houston, but when I left San Antonio I did not expect to return before the 10th or 15th of November.

The time spoken of by Walker and myself, as to the meet-
139 ing with Houston, was when I should return to San Antonio, which was spoken of or thought to be about the 10th or 15th of November. I had not telegraphed my return to Mr. Houston prior to meeting him. In the course of this conversation Mr. Houston asked me "Why can't you take this contract I have made with Mosty and save me the trouble of going up there; they are the same cattle I previously sold to you?"

He did not say to me that he would make me another proposition, or a new proposition, he said he would like me to take this contract off of his hands and save him the trouble of going for the cattle.

He showed me the Mosty contract that evening, and I read it and returned it to him. After reading the contract that evening I did not say that evening I would accept the assignment of it provided he would guarantee that it would be filled. I handed it back to him and said I would see about it in the morning.

I did not say "I would consider the matter and give him an answer next morning." We met the next day, probably about
140 nine or half past nine o'clock. I cannot remember the exact time.

I saw Major Hinkle on the night of October 31st. I think I saw him before and after I saw Houston. I don't remember that I mentioned to Hinkle on this evening the proposition to assign the Mosty contract; I may have done so, but I don't remember whether I did or not. I saw Major Hinkle the next morning before I met Mr. Houston. I don't think it was more that half an hour or such a matter before I met Houston. I then mentioned to Hinkle the proposition of Houston to assign me the Mosty contract.

Hinkle and myself talked about the matter a few minutes. We did not consult about it. We talked about the proposition of Houston to assign to me the Mosty contract.

The only reason why I wanted to postpone giving Houston answers about the transfer of the Mosty contract was that we were to meet next morning to complete our arrangements. I had no other reason as to why I did not accept or reject Houston's proposition when he first made it on the evening of October 31st, more
141 than that it was late in the evening and we were to meet the next morning to complete the transaction.

At this point the taking of this deposition was postponed until to-morrow the 21st instant, at 10 o'clock a. m., owing to the expiration of the day.

GEORGE PASCHAL, *Examiner.*

The testimony of the witness, Benjamin F. Buzard, was resumed according to adjournment, and the witness then continued to testify upon cross-examination as follows:

I do not think I had any conversation with any other person concerning the proposition made by Houston to transfer the Mosty contract prior to the time it was transferred to me.

I don't think W. S. Carothers was in town at this time. I did not communicate with anybody or in any manner in relation to the proposition of Houston to transfer the Mosty contract, previous to its transfer, except the talk I had with Major Hinkle. Major Hinkle to a certain extent conducted the previous negotiation with Houston for me; he introduced Mr. Houston to me, and was instrumental in bringing about the trade, and talked up the cattle.

142 (The plaintiffs' counsel here suggested to the witness that he did not probably understand the import of Mr. Waelder's question; that Mr. Waelder was asking if Major Hinkle was acting as his agent. This suggestion of plaintiffs' counsel was taken down

at the suggestion of defendant's counsel, and the witness then proceeded as follows:)

I did not understand the question as asked by Mr. Waelder. Major Hinkle was not acting for me in any way, but he stated to me that he was authorized by Mr. Houston to find him a buyer for those cows, and he was instrumental in making the trade.

In making the assignment of the Mosty contract Houston proposed and agreed to transfer all of his right, title, and interest in the Mosty contract, and all interest on the money which he had advanced on the same. It was not also agreed that the Mosty cattle should be counterbranded to me without expense to me. I do not think anything was said about counterbranding the cattle. In speaking with Houston about McAnulty being a partner of Mosty, Houston did not tell me that Mosty told him he was a partner, but that McAnulty had told him. I stated yesterday I knew
143 McAnulty to be solvent. I knew this from his general reputation and standing among cattle men, that his reputation was number one, good.

Cattle men know in a general way the financial standing of each other.

In speaking of the twelve hundred head of cows which Houston said Mosty had in his rail brand, he stated that he had received this information from Mosty; that Mosty had told him so. I also stated yesterday that I knew Houston to be solvent. I ascertained this from several cattle men, and his general financial reputation among cattle men was good. I ascertained Houston's reputation, financially, at different times, and from his transactions in cattle, and I made inquiry of a number of cattle men at the time of making this transaction. I also made inquiry of Lockwood, the banker. I made inquiry of Lockwood about the time of making the first contract or on the following day; I think it was about this time. Lockwood is my banker in this city. I went to Felix Smith to have the assignment of the contract drawn at the suggestion of Mr. Houston.
144 The terms of the assignment were agreed upon at Major Hinkle's office. We then went to Mr. Smith's office together, and Mr. Houston stated the terms of the assignment to Mr. Smith, and Mr. Smith then drew the terms of the assignment on the contract.

Question. You stated yesterday that you had bought other cattle, for which reason you did not have the money to pay Houston, and therefore gave him a time draft. Please state now when you bought those other cattle, from whom, and about how many.

(The plaintiffs' counsel objected to the question, because it is irrelevant.)

Answer. I had a man in our em-loy, J. R. Pemington, buying cattle in Hunt, Kaufmann, Fannin, and adjoining counties. I am unable to state the names of the parties he bought from at that time. The whole number bought and contracted for in October and November was in the neighborhood of five thousand head. I stated I gave Houston a time draft, payable on November 16th. Lockwood

did not tell me that Houston had endorsed it; he told me he had discounted it, and Houston told me himself he had discounted
145 it. The draft was dated on the first of November, and on the 2nd of November Lockwood told me he had discounted it. The draft was made payable to R. A. Houston or order.

Question. It being payable to order, could he discount it without endorsing it?

The plaintiffs' counsel objected to the question, because it asks the witness to give a legal opinion without first having shown that he is an expert in law.

Answer. I don't think he could, as that is the usual way of disposing of paper of that kind. I paid the draft before or about the time it was due.

When I paid it I think it was endorsed by Houston. His name was written on the back of it. I cannot tell the exact day on which I paid it. We had a running account at the bank, and I cannot tell the exact day it was paid. I have known W. S. Carothers, I think, about two years. His ranche adjoins our ranch, and passes through our pasture in going to and from his ranche. I presume Carothers made his headquarters at his home in Austin at the time of these transactions with Houston, but he was going back and forth to and from his ranche. I don't think I ever talked over
146 any of my business matters with Carothers, except so far as our mutual interests were concerned in the division fence between our lands. I may have spoken to him about my cattle purchases in a general way, but I do not remember of talking with him about any particular transaction. I presume Carothers knew of my purchase of the Mosty contract, although I never informed him in any way that I know of. I stated yesterday that I received a dispatch from Carothers on the 9th or 10th of November. This dispatch was sent from San Antonio, and was handed to me by Mr. Piper, at Uvalde. I had arrived at Uvalde the same night the dispatch was received there. I was not expecting a dispatch, and did not go to Uvalde for that purpose. I was expecting Carothers in person, as we were to run a division line between us, and were to meet at Uvalde for that purpose. I know how Carothers came to despatch to me. Mr. Carothers stated to me, after my arrival in San Antonio, in response to his dispatch, that when he left Austin on the train to come to San Antonio he met Geo. W Littlefield, who had just returned from Lampasas, and he had told him all
147 about the Mosty failure; and as he knew where I was, he advised me of the fact immediately on his arrival at San Antonio, the same night.

I came to San Antonio in answer to this despatch on November 10th or 11th. I left Uvalde the following morning. By reference to my memorandum of expense account I find I left Uvalde on November 11th and arrived at San Antonio the same night. From San Antonio I went to Austin, and from there I went direct to Lampasas. I was only in Austin a few hours. I saw at Lampasas Judge Acker and a man named White, who had charge of some of

the Mosty cattle on behalf of Mr. Littlefield; the county clerk, and other parties whose names I do not know.

Question. In your conversations with the parties named did you learn that the partnership between Mosty and McAnulty had been dissolved?

The plaintiffs' counsel objected to the question because it calls for hearsay evidence, and not being proper cross-examination; the question is objectionable in form, and it is not a legal way of showing the existence or dissolution of a partnership.

148 Answer. I learned that a partnership which had been formed between McAnulty and Mosty had been dissolved on or about the 7th of October, 1881.

I saw a record of a bill of sale from Mosty and McAnulty of all his cattle.

(The plaintiffs' counsel here objected to that part of the answer which refers to the contents bill of sale.)

The witness then proceeded as follows: I did not see a notice of the dissolution of the partnership between Mosty and McAnulty. I was informed by Judge Ackers, who drew the papers, that that partnership had been dissolved. Judge Ackers did not show me a notice of the dissolution. He stated to me that such a notice existed and was on record. He did not show it to me, and I did not go to see it. I did not go to see it because I relied upon Judge Acker's statement as sufficient. I was satisfied that the facts were as stated by Judge Acker, and for that reason I did not deem it necessary to look into the matter further after his statement. I was at Lampasas one night and a day. There was a telegraph line to Lampasas at that time.

Question. With what line of telegraphy did the telegraph
149 line at Lampasas connect?

(The plaintiffs' counsel objected to the question because it is immaterial.)

Answer. I do not know. I sent a despatch from there to Major Green, at Austin. In sending the despatch I did not ascertain what line it was and do not now know. I do not know if the telegraph line at Austin is or is not a part of the general system of the Western Union Telegraph Company. I don't know if any point in the country can be reached by telegram from Austin; I presume it can; I have telegraphed from Austin. I have sent messages from Austin to Waco, to Saint Joseph, Missouri, and to San Antonio. I don't remember having sent any to any other points from Austin.

(The complainants' counsel objected at the time and still objects to all questions and answers above in relation to telegraph lines, it being immaterial to any question at issue.)

The witness then continued as follows: From Lampasas I came down to Georgetown by private conveyance, and from Georgetown

by train from Austin, San Antonio, and Harwood, and from
150 Harwood by stage to Gonzales. I left Lampasas on the night of the 15th of November, and arrived at Gonzales on the night of the 17th. I saw Houston on the morning of the 18th, the following morning after my arrival at Gonzales. I had part of my conversation with Houston at Gonzales, at the bank of Littlefield, and part of it on the sidewalk. I believe the bank is known as the bank of Dillworth & Lewis. I met Mr. Dilworth in the bank; he was not present during our conversation. I don't remember that our conversation on the sidewalk was in front of any store; we walked out of the bank and set down, I think, on some lumber; from there we walked over to the hotel and sat on the hotel porch. I don't remember the exact language and conversation that passed between us during these interviews—there was considerable. I stated to him that I had ascertained Mosty was all broke up, and that I had gone up to see what could be done, and had found that Mosty had transferred all of his property early in October, and before I had received from him the assignment
151 of that contract, and that he must have known of Mosty's condition before that assignment was made; that I wanted him to fill the contract or return the money we had paid. He stated that he did not consider he was bound to do either, and that he had no knowledge of Mosty's condition at the time he made the assignment. He positively refused and declined to do anything in the matter whatever, or to fill the contract, or to pay the money. This was, in substance, about the conversation we had. I have stated, in substance, as near as I can recollect, all that Houston said in these several conversations. I remember stating to him that we had payed him fifteen thousand dollars for no consideration, as the contract was null and void before it was transferred to us. He said he had sold the contract and had got his money, and intended to keep it, and that we would have took to some one else for our money. He said he had assigned the contract without recourse, and that he did not think he was liable. I did not give him the first information of the failure of Mosty. I think he said Capt. Littlefield had
152 first informed him. I stated to Houston that he had misrepresented the matter to me; that McAnulty was not a partner with Mosty in that contract, and that a special contract which existed between Mosty and McAnulty had been dissolved some time early in October.

Question. Did not Houston tell you, in the course of the conversations referred to by you as having taken placed at Gonzales, that he had never represented to you, as facts in his own knowledge, that Mosty was solvent, and that McAnulty was his partner, but had stated to you when the assignment was made that Mosty had made these statements to him, and that he, Houston, believed them to be true, and did you not then (meaning in those conversations) assent to Houston's statements as true?

Answer. Houston stated that he considered the contract good, or he would not have advanced the money on it, and that he considered McAnulty was a partner, but that he had not represented that

McAnulty had told him so, but that Mosty had told him so.
153 He did not say at that time that Mosty had made those representations to him, and I did not assent to the statements made by Houston at that time in regard to the matter. Houston stated at that time that I was mistaken in saying that he had told me that McAnulty had told him that he, McAnulty, was a partner in that contract, but said, "I told you that Mosty had told me so." He did not say anything at this time that he had represented that Mosty was solvent, or that he had received the information of Mosty's solvency from him, but said he considered the contract was good when he made the assignment.

Re-examination:

The witness then continued to testify upon re-examination as follows: Captain Nauson became interested in the ranche some time in January, 1882, I think. The only parties interested, directly or indirectly, in the trade I made with Houston was Captain Hillard and myself. At the time the trade was made with Houston there was then about forty-one thousand acres of ranche lands owned by Captain Hillard, Mr. Barnard, and myself. Mr. Barnard was at
154 that time a resident of St. Josephs, Missouri. Mr. Barnard furnished no part of the money paid Houston on the contract, it was furnished by Captain Hillard and myself, and the assignment taken to Captain Hillard and myself. I do not know all the cattle men who drive cattle from Texas to Fort Dodge, Caldwell, and other northern cattle markets. I never knew Mr. Mosty or anything about his financial standing. I stated to Mr. Henkle on the morning of November the 1st—

(The defendant's counsel here objected to the question and answer upon the ground that any conversation between the witness and Mr. Hinkle is inadmissible, unless such conversation was had in the presence of the defendant, Houston.)

The witness then proceeded as follows: That I would not take the assignment of the Mosty contract because I knew nothing about Mosty, and that we would go and complete our original contract. He said that he considered that contract perfectly good, and that if R. E. McAnulty was a partner in the contract that he was
155 satisfied McAnulty was a partner in the contract as Houston had told him so; that no cattle contract in the State of Texas could be made any better, as McAnulty was as sound as any cattle man in the State, and that he knew Mosty was good, as he had handled at least twenty thousand head of cattle that season and had made a lot of money. Hinkle advised me to take an assignment of that contract instead of completing the other. This was a short time before—probably half an hour—before Houston came to the meeting. At this time Hinkle was agent for the Texas Live Stock Journal, and his opportunities were very good for knowing the cattlemen generally throughout the State. Mr. Houston offered to pay Smith for writing the assignment, but I think he declined to accept anything. I had never met Judge Smith before. I did not suggest that any

attorney should write the assignment. Mr. Houston said he knew Judge Smith and suggested that we go to his office and have him write it. When I stated to Mr. Houston that I had not
156 sufficient money then here to pay the advance but would have to give him a time draft until the money could be placed to our credit by Captain Hillard, he said it was all right, that it made no difference to him, as he did not need the money then at any rate, and I could make it payable at ten or fifteen days and it would be satisfactory to him.

Question. Did Mr. Houston deny at Gonzale's having made the representations to you, concerning which you have testified, or did he merely content at that time that he had made such representations upon belief and not as facts?

Answer. He did not deny the representations made, except he denied that he had stated that McAnulty had told him he was a partner of Mosty's, and said that Mosty had told him so; this conversation at Gonzale's was after Houston knew of the insolvency of Mosty.

Recross-examination:

The witness then continued to testify upon recross-examina-
157 tion as follows:

Mr. Barnard was to have an interest in the cattle ranche, provided he furnished his share of the money, and he had furnished no money up to the time of this transaction.

Question. If one of the partners advanced money for the common purpose of establishing the cattle ranch, would the other partners be charged with their proportion of the money so advanced?

(The plaintiffs' counsel objected to the question, because neither the question or the answer is admissable, on the ground that it is asking an opinion upon a question of law.)

The witness then proceeded as follows:

Answer. I don't know whether they would or not.

Question. Would the advancing partner be credited with the amount advanced?

(The plaintiffs made the same objection.)

Answer. He would; the land was first purchased, and the ranche was to be established and each party have an interest in the cattle when they paid in their proportionate amount of money; I
158 paid for the first forty-one thousand acres of land purchased at Austin with money furnished by Captain Hillard, Mr. Barnard, and myself; the title was first taken in the name of Mr. Barnard and myself, and we deeded a one-third interest to Captain Hillard; all of the cattle now on the ranche, and all purchased since its establishment, belong in common to the joint owners of the land.

Question by the examiner:

Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of

your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I do not know of anything.

B. F. BUZARD.

The testimony of the witness was then read over to him, and was by him pronounced correct, and the same was sworn to and subscribed before me, this the 21st day of October, A. D. 1882.

GEORGE PASCHAL, *Examiner.*

159 Second. The complainants offered and read the deposition of Alonzo Millett, a witness for complainants, taken before said examiner, which testimony is as follows:

Mr. ALONZO MILLETT, a witness for the complainants, was then produced, and having been by me duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows upon direct examination:

My name is Alonzo Millett. I am thirty-nine years of age. I reside at San Antonio, Texas. I know Robert A. Houston, the defendant in this case. I saw him about the middle of October, 1881, during the fair week, at San Antonio, at the Hord Hotel. (The defendant here objected to the question to and answer of the witness as to any conversation he may have had with the defendant Houston concerning cattle trades between the witness and the defendant Houston, as irrelevant to the issue.)

The witness then proceeded as follows:

160 Houston first asked me if I was buying cattle, and I told him I was. He then told me he had some cows to sell. I asked him where they were. He told me one lot of about fifteen hundred was about Lampasas, and that he had about one thousand in Gonzales. I then asked him who was to deliver the cattle at Lampassas. He told me Lee Mosty. I then remarked that that trade wouldn't be filled, and we wouldn't talk trade about that lot, and those at Gonzales we could not agree about the time of delivery. I wanted them in the fall, and he wanted to deliver them in the spring. He asked sixteen dollars a head for the Lampasas cattle.

Question. State whether at that time you knew anything of the solvency of Mosty.

(The defendant objects to the question for the reason that the knowledge of the witness could not affect the defendant unless it had been communicated to him.)

The witness then proceeded as follows:

Answer. I had my suspicions aroused. I had met Captain Littlefield here four or five days, I think, prior to meeting Hous-
161 ton, who had told me that he had advanced Mosty ten thousand dollars to buy cattle, for which he didn't have the scratch of a pen for, and he considered it as good as lost. I also met Mr. Towers at Denison, who had also made an advance of money to Mosty and had been looking him up to recover his money. Mr. Littlefield lives at Gonzales.

(The defendant objects to that part of the answer also in which the witness relates his conversation with Littlefield and Towers for the same reason stated in the previous objection.)

The defendant declining to cross-examine the witness he was discharged.

ALONZO MILLETT.

The testimony of the witness was then read over to him, and was by him pronounced correct, and the same was sworn to and subscribed before me, this 21st day of October, A. D. 1882.

GEORGE PASCHAL, *Examiner.*

Third, the complainants offered and read the deposition of D. W. Hinkle, with exhibits attached to or referred to in the same, the testimony of said witness having been taken before the afore-
162 said examiner, and is as follows:

SAN ANTONIO, TEXAS, *October* 23, 1882.

The depositions in this cause were resumed at 2 o'clock p. m., pursuant to adjournment.

D. W. HINKLE, a witness for the complainants, was then produced, and having been by me duly sworn to tell the truth, the whole truth, and nothing but the truth, testifies as follows upon direct examination:

My name is D. W. Hinkle; I live at San Antonio, Texas; I am forty-six years of age; I am one of the proprietors of the Stock Journal Publishing Company, published at Fort Worth, and one of the Texas Investment Company, and manage a department of both concerns at San Antonio. In October and November, 1881, I lived in San Antonio, and my business then was the same as now. At this time I knew Buzard and Houston, two of the parties to this suit; I have known Houston for seven or eight years; I have known Captain Buzard about one year and a half.

(The defendant defendant here objected to the question and
163 answer of the witness, for the reason that the contract and assignment about which he is being interrogated are in writing and appear to be so by the pleading of the parties, and speak for themselves; and any antecedent conversations relative thereto are not admissable as evidence.)

The witness then proceeded as follows: In October, 1881, Mr. Houston asked me to sell two thousand head of cows for him which he had contracted from L. A. Mosty. He represented to me that most of those cows were then on hand in Lampasas county. I sold the cows to B. F. Buzard, by and with the consent of Mr. Houston and in his presence, and drew up a memorandum contract of the price and class of cattle, which was signed by both Buzard & Houston on payment of five hundred dollars by Buzard to Houston, binding both parties to meet next day and ratify it.

Exhibit "A" to the defendant's further answer was here shown the witness (see record, page 283, for this exhibit), who then said:

This is the memorandum contract to which I have referred. It is in my handwriting. I advised Buzard to buy the cattle mentioned in this memorandum contract because Mr. Houston had told me that the cattle were then nearly all gathered and then on hand in Lampasas county, and that R. E. Anulty was Mosty's partner in that contract for delivery. The next day Houston failed
164 to put in appearance, as he had agreed to in the memorandum contract, and he (Houston) was absent for some ten days or two weeks. At the end of that time, ten days or two weeks, Houston asked me to get Buzard to let him off from the contract and take his original contract with Mosty in lieu of it. As Captain Buzard was present or in the city, I got him and Houston together, and Houston told him that as his business would prevent his giving his personal attention to the delivery of the cattle he would deduct twenty-five cents a head if Buzard would substitute Mosty's contract in place of his. Buzard asked me if Mosty's contract with Houston was good. Houston answered, he being present, that R. E. McAnulty was a partner to the contract, and that most of the cattle were gathered and then in the rail-brand in Lampasas county. Based on that statement, I advised Buzard to take it. Mr. Houston then paid me my commission, and I had nothing further to do with it. Houston told me that McAnulty had told him himself that he was a partner of Mosty. Houston said that Mosty was as good
165 financially as he was. All this conversation occurred in the presence of Captain Buzard. Captain Buzard said he didn't know anything about Mosty; that he knew Houston was good, and told Houston he only made the transfer to accommodate him (Houston). Buzard told Houston that he transferred that contract, relying on Houston's statement that both McAnulty and Mosty were interested in the contract and were perfectly responsible. Buzard was to relieve Houston of the trouble of going up there and take Mosty's contract—I mean an assignment of it—in lieu of Houston's contract, for which Houston paid him twenty-five cents a head. I was acting as agent for Houston in the sale of the cattle.

Buzard asked me concerning the solvency of Mosty at the time of the interview with Houston, and just before. When the inquiry was made by Buzard about the solvency of Mosty, when Houston was present, Houston answered it. After the answer of Houston to this inquiry, I told Buzard that if R. E. McAnulty was a
166 partner of Mosty it made the Mosty contract as good as the bank, and I then advised him to take the transfer. He had declined to take the transfer of the Mosty contract in place of the other up to this time.

Buzard stated that, as he didn't know Mosty, he would have to rely on our joint statements that Houston's contract with Mosty was good, and, relying on that statement he *had* would make the transfer. They then left my office together, and I never saw the transfer they drew up until some time after. I kept the memorandum contract in my possession from the minute it was drawn up until this transfer was made. I did not know the financial standing of L. A. Mosty at that time. My opportunities at that time of knowing the

financial condition of cattle men generally *was* perhaps better than —any man in the State. I had a considerable knowledge of Texas cattle men generally.

Cross-examination:

The witness then continued to testify, upon cross-examination, as follows:

167 In speaking of the cows which Houston said *was* on hand he did not tell me that Mosty had told him so; he ought to have known whether they were on hand or not, as the time of delivery from Mosty to him had been postponed on account of dry weather. When I first spoke to Buzard about the sale of the Houston cattle I told him they were the Mosty cattle that Houston was offering to sell, and I specified the county in which they were. It was the Mosty cattle that Buzard was bargaining for at the time the memorandum agreement was made, and Buzard so understood it. When Houston spoke of McAnulty as being a partner of Houston, he said that McAnulty and not Mosty had told him so.

I think that Mosty had handled some ten or twelve thousand head of cattle that year; I don't think it was more than that; he had failed to comply with some of his contracts that spring; I knew McAnulty to be perfectly responsible of my own knowledge.

When I advised Buzard to take the transfer of the Mosty contract I did so upon my own knowledge of the responsibility of Mc-
168 Anulty, and not upon the representations of Houston as to McAnulty's responsibility; I did not think the contract was good without McAnulty being on it.

I had an interview with Buzard the night before the transfer of the Mosty contract was agreed upon; Houston was present at this interview; the transfer of the Mosty contract was then spoken of; I believe I was the only party, though, who spoke of it. Nothing was agreed upon that night in reference to the transfer. Buzard said he would like to have a talk with me and see what I thought about it. The matter was postponed until next day—the whole conversation and trade. Buzard did not say he would give him an answer next morning; Buzard did not make his appearance at my office the next morning before Houston.

I saw Houston and had a talk with him the next morning before I saw Buzard. Buzard came in while Houston and myself were talking. The trade was then closed in that interview. I think Buzard knew something of the financial standing of McAnulty; I think he knew him to be perfectly good as well as myself.

169 I gave Buzard advice while I was acting as the agent of Houston, because he was a stranger in the State, and because Houston asked me to induce him to make that transfer. I would not have given him the advice I did if I had not known McAnulty to be perfectly good. I did not believe Mosty to be good; also, I didn't believe the contract was worth a cent unless McAnulty was on it.

Question. Had you learned from any other source or sources at

that time that McAnulty was a partner of Mosty in the cattle business?

(The complainants object to the question because it calls for hearsay evidence concerning the general partnership between those parties, and not concerning the partnership between those parties in the contract assigned, and is not the proper method of proving a partnership, and is therefore incompetent, irrelevant, and immaterial.)

Answer. I had heard that Mr. Houston had reported from various sources, and I knew that somebody must be furnishing Mosty the money to operate on.

Question. When you started to answer the last question
170 you commenced by saying, "there was a general rumor," when you were stopped by the objection to the question; please state now what was the general rumor that you were about to testify to.

(Complainants' counsel objected to the question because the question calls for testimony concerning rumors, and is incompetent, irrelevant, and immaterial.)

Answer. I had tried to sell those same cattle to Millett, to Tom and John Dewees, H. D. Sullivan, and they all told me the contract was worthless or would never be filled; and H. D. Sullivan told me it lacked McAnulty's signature to it to make it binding.

Question. Now please answer the question if you had heard from any other source or sources, except through Houston, that McAnulty was a partner of Mosty in the cattle business?

(The complainants made the same objection as above.)

Answer. Only from parties to which Houston and I had tried to sell the cattle. They did not get the information from me. Buzard was the only man I ever told that Houston said that McAnulty was
a partner in the Mosty contract, and Houston never told me
171 that McAnulty was a partner with Mosty in the general business. In October and November, 1881, I knew a man in San Antonio, from Gonzales, named R. S. Walker, or Ruf. Walker; Walker came as a messenger from Houston to Buzard, informing him that Houston could not comply immediately with the contract, because he was sick, but would do so as soon as he was well; this was between the time the original memorandum contract was made up and the time of the transfer of the Mosty contract. I believe Walker came here in answer to a verbal promise made by Houston to Buzard to meet him, and to explain the reason why Houston could not meet him. I can't tell how many days this was after the original memorandum contract was made. I stated Buzard wanted to have a talk with me before he gave Houston a definite answer. I had this talk with Buzard; in this talk I did not tell him of Mosty's financial condition; I told Buzard that as Houston said the cattle were

gathered and in the rail brand, and were then in Lampasas
172 county, and R. E. McAnulty was a partner to the contract, I considered the contract good. I did not tell Buzard that the Mosty contract was not good unless McAnulty was in it. Houston paid me at that time twenty or twenty-five dollars for my commission in drawing up that contract. He didn't pay me any commission for making the sale, as I didn't think I made it. He paid me for my commission and assistance generally. He paid me the amount I mentioned in cash. Buzard paid me nothing for advising and assisting him; I was acting as the agent of Houston and not as the agent of Buzard.

D. W. HINKLE.

The testimony of the witness was then read over to him, and was by him pronounced correct, and the same was sworn to and subscribed before me, this 23d day of October, 1882.

GEORGE PASCHAL, *Examiner.*

At this point the further taking of the depositions in this cause was postponed, owing to the expiration of the day, until tomorrow, October 24th, at 10 o'clock a. m.

173 SAN ANTONIO, TEXAS, *October 24th*, 1882.

The taking of the depositions in this cause was then resumed, pursuant to adjournment.

The witness, D. W. HINKLE, then appeared and requested to make an alteration in his testimony. The witness then stated: I wish to change my testimony on page 46, which reads: "He ought to have known whether they were on hand or not, as the time of delivery from Mosty to him had been postponed on account of dry weather," to read: "I knew that other contracts with Mosty had been postponed on account of dry weather, and that Houston knew that Littlefield's contract had been postponed on account of it."

D. W. HINKLE.

Sworn to and subscribed before me, this 24th day of October, A. D. 1882.

GEORGE PASCHAL, *Examiner.*

Fourth. The complainants offered and read the deposition of Thomas Dewees, a witness for complainants, taken before
174 said examiner as aforesaid, which deposition is as follows:

THOMAS DEWEES, a witness for the complainants, was then produced, and having been by me duly sworn to tell the truth, the whole truth, and nothing but the truth, testifies as follows upon direct examination:

My name is Thomas Dewees. I am forty years of age. I live in Bexar county, Texas. I am a stock-raiser. I believe I know Captain Buzard, Mr. Hillard, and Robert A. Houston when I see them. Personally, I have not known Mr. Houston a great while, and I have not known either of the parties a great while. I never met Houston until about eighteen months ago. I met Mr. Houston, as

near as I can remember, in San Antonio, while the Federal court was in session here in the fall of 1881; the exact date I cannot remember. At that time I met him here he made us a proposition to sell us some cattle—cows; a part of them was in Gonzales county, and a part of them in Lampasas county, I think. I don't know what cows they were in Lampasas county. I had a talk with
175 Houston about some cows in Lampasas county for which he had a contract with another person. I don't remember that he told me with whom this contract was made. The cattle he offered me were from eight hundred to a thousand head in Gonzales county, and from twelve to fifteen hundred head in Lampasas county. This conversation, as well as I remember, was in the afternoon, after dinner, and I told him I would see him next morning. I met him the next day, and he told me he had sold the Gonzales cows to Coleman, Fulton & Co. He asked me then if we wanted to trade for the cows up the country, and I told [him] no; that we did not want them without the Gonzales cattle. The reason why I did not take the Lampasas cattle was because Houston would not agree to deliver them at our pasture, and we did not wish to handle them at Lampasas, or wherever they were. We proposed to take the Gonzales cattle at Gonzales county. The pasture where we wanted
176 the Lampasas cattle delivered is in Wilson, Atascosa, and Karnes counties. I don't think I had met either Captain Buzard or Captain Hillard before this talk with Houston. I don't remember having met either. I may have met Captain Buzard.

The defendant's declining to cross-examine, the witness was discharged.

THOS. DEWEES.

The testimony of the witness was then read over to him, and was, by him, pronounced correct, and the same was sworn to and subscribed before me on this the 24th day of October, 1882.

GEORGE PASCHAL, *Examiner.*

Fifth. The complainants offered and read the deposition of JOHN W. GAMEL, a witness for complainants, taken before said examiner as aforesaid; which deposition is as follows:

My name is John W. Gamel. I am thirty-seven years of age. I reside in Mason county, Texas. I am a stock-raiser. I know B. F. Buzard and Robert A. Houston. I do not know Moses Hillard. I knew Buzard and Houston in the fall of 1881. During the
177 fair at San Antonio in 1881 I had a talk with R. A. Houston about some cows—about one thousand head; they were in Lampasas county. I don't know who was to deliver them. The conversation was simply this: I wanted the cows, and he didn't want to let me have them. The reason why he didn't want me to have them was that he said they were not good enough, or something that way, and that he would rather put them off on this other party. I don't remember that Houston said there was any doubt about the delivery of the cattle. He simply said I was a friend of his, and he did not want me beat, or something like that. He did

not claim to have the cattle then, and only claimed to have a contract for them.

Cross examination:

This conversation was at Hord's Hotel in San Antonio. I don't believe any one else was present; there was quite a crowd around us; we were sitting, as well as I recollect, on the sidewalk in front of the house; I did not make him an offer for the cattle.

JOHN W. GAMEL.

178 The testimony of the witness was then read over to him, and was by him pronounced correct, and the same was sworn to and subscribed before me, this 3d day of November, A. D. 1883.

GEORGE PASCHAL,
Examiner in Equity.

The complainants then offered and read in evidence the deposition of R. E. McAnulty, a witness for the complainants, taken by interrogatories, in accordance with the State practice by agreement between the counsel for the complainants and the defendant, with the exhibits attached and referred to therein, which deposition, with commission, interrogatories, and copy of agreement, is as follows:

WESTERN DISTRICT OF TEXAS, *ss:*

In the Circuit Court of the United States for the Western District of Texas at San Antonio.

BENJAMIN F. BUZARD AND MOSES HILLARD
vs.
ROBERT A. HOUSTON.

Suit pending in said court. In chancery. No. 9.

The President of the United States to the clerk of the district court, or any judge or clerk of the county court, or any notary public of the county of Shackleford, in the State of Texas, Greeting:

179 You are hereby authorized and empowered to cause to come before you R. E. McAnulty, a resident of the said county of Shackleford, and his answers take to the accompanying interrogatories and cross-interrogatories propounded to him in a certain cause now pending in said U. S. circuit court, wherein B. F. Buzard and Moses Hillard, plaintiff-, and Robert A. Houston, defendant, and having reduced the said answers of the said witness or witnesses to writing you will—

1st. Cause the same to be subscribed and sworn to by the said witness or witnesses.

2nd. You will certify under your hand and seal of office that said answers were subscribed and sworn to before you.

3d. You will seal up in an envelope the answers so taken, together with the answered interrogatories and this commission, and endorse your name across the seal.

4th. You will endorse on the said envelope the names of the parties to this suit and the name of said witness or witnesses.

5th. You will direct the package to the clerk of the circuit court of the United States at San Antonio, Texas.

180 6th. If the package is sent by mail you will have the postmaster or his deputy to endorse thereon over his official signature that he received it from the hands of the officer taking the same, and in all other respects he will conform to the requisitions of the statute in such cases made and provided.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court hereto affixed at San Antonio, Texas, this 13th day of January, A. D. 1883, and the 107 year of our Independence.

[L. S.]

W. C. ROBARDS,
Clerk U. S. Circuit Court.

(Copy A.)

Article of copartnership made and entered into this 17th day of August, 1881, by and between R. E. McAnulty, of Austin county, Texas, and L. A. Mosty, of Lampasas county, Texas. Witnesseth:

1st. That the said parties have this day entered into a co-
181 partnership for the purpose of raising, buying, and selling stock in the State of Texas and adjoining Territories.

2nd. That said partnership shall be known as McAnulty and Mosty, and shall continue until dissolved by mutual consent or the death of either party.

3d. That all stock raised or bought by said firm shall be branded thus X on the left side of the animal, and every animal so branded shall be known as the property of said firm.

4th. The capital stock of said firm shall be fifty thousand dollars or more, contributed as follows: Said McAnulty is to furnish the sum of fifty thousand dollars or more, and the said Mosty is to give his personal attention to said business, such as managing and superintending ranches, hiring help, buying and selling stock, and everything necessary to be done in order to successfully prosecute and carry on said business.

Witness our hands and seals, this 17th day of August, 1881.

Signed in duplicate.

R. E. McANULTY. [SEAL.]
L. A. MOSTY. [SEAL.]

Attest:
JNO. C. HORTISON.
R. L. HARPER.

182 In U. S. Circuit Court for the Western District of Texas, at San Antonio. In Chancery.

B. F. BUZARD and MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON. } No. 9.

To the defendant in the above-named case or his solicitors, Hancock & West, Waelder & Upson:

You will take notice that we will take the answers of R. E. Mc-

Anulty, a resident of Scha-k*le*ford county, Texas, to the following interrogatories, to be read in evidence on the hearing of said cause.

R. E. BARNARD,
Of Counsel.
JNO. A. & N. O. GREEN,
Solicitors for Complainants.

Interrogatory First. State your age, occupation, and place of residence, and also state if you are acquainted with the parties to this suit, or any of them, and which, and if you know or have heard of the object of the suit, state such object in brief and general terms.

Interrogatory Second. If you say the subject-matter of the
183 the suit grows out of a certain cattle contract made by one L. A. Mosty with the defendant, Robert A. Houston, and assigned by the defendant Houston to the complainants, please state what you know about the said contract, its date, and its terms and conditions; state what connection or interest, if any, you ever had with or in said contract; and if you say you had no connection with or interest in said contract, please state when you first knew or heard of the same.

Interrogatory Third. The complainant in this suit seeks to rescind the contract of assignment by the defend*and*ant to them of a cattle contract between him, the said defendant Houston, and one L. A. Mosty, which cattle contract purports to have been made at Dodge City, Kansas, August 13th, 1881, and which was a contract by the said Mosty with the said Houston to deliver to him, the said Houston, near Lampasas, Texas, from the first to tenth of May, 1882, fifteen hundred head of cattle, cows & bulls, at the price of thirteen $\frac{50}{100}$ dollars per head, in consideration of certain payments
184 therein undertaken by the said Houston; and it is alleged in the bill of complainants against the defendant that the defendant at the time of assigning the said cattle contract to the complainants, to wit, on the first day of November, 1881, as an inducement to the complainants to accept the said assignment falsely and fraudulently represented to said complainants that you were a partner of the said L. A. Mosty in the said contract, and that you were bound for the fulfillment of the same by the said Mosty. Will you please state what you know about the said cattle contract between said Mosty and the said Houston, and what connection, interest, or responsibility, if any, you had in or towards said contract? And please state as to any partnership between you and the said Mosty at that time or any other time as effecting said contract, or what interest you ever had in the same or responsibility therefor; or what benefit, if any, you ever received from the same.

Interrogatory 4th. Were you ever a partner in the cattle business with L. A. Mosty? If yea, please state what were the
185 terms of the contract of partnership, when and where was it entered into, and when was it ended, and how was it ended, and for what reason.

Interrogatory 5th. Please examine a paper herewith presented to you, marked ("Copy A"), purporting to be a copy of a contract of

partnership between R. E. McAnulty and L. A. Mosty, dated August 17th, 1881, and state who is the McAnulty and who the Mosty referred to, and state, if you know anything about an original of said paper, and state what you know about the said copy being a true copy of the original.

If you say it is a true copy, state where the original of said document is, and if you have the original please produce it, and attach the same to your answer to this interrogatory.

Interrogatory Sixth. State when and where the said paper mentioned in the preceeding interrogatory was executed, and state what other contract of partnership, if any, was ever executed or
186 made between you and the said L. A. Mosty.

Interrogatory Seventh. What amount of money did you furnish to the said L. A. Mosty on the contract of partnership between you aforesaid; what was the date of your first giving him money on your partnership contract, and what amount of money did you pay out on account of the same; and state what amount of money, if any, did the said Mosty ever pay over or place in your control on account of said partnership.

Interrogatory Eighth. What did L. A. Mosty do with the fifteen thousand dollars, or other sum, received by him from the defendant Houston on the cattle contract of 13th August, 1881, between him and said Houston, referred to in interrogatories second and third above? Do you know anything about it? If yea, state what you know, and what portion of it, if any, was received by you.
187 Interrogatory Ninth. If you were in any way bound as a partner of said Mosty, or otherwise, for the fulfilment of said contract with the defendant, R. A. Houston, for the delivery of the 1,500 head of cattle spoken of in interrogatory second and third above, or if you know anything about the same, or if you handled any of the money arising from said contract, please state how you were bound, what you know about the said contract, and what money you handled.

Interrogatory Tenth. Please state fully your connection with L. A. Mosty in the cattle business in the summer and fall of 1881, and the nature of your transactions with him in that business. What class of cattle were you to buy and sell; and state all other facts necessary to show the nature of your dealings with one another.

Interrogatory Eleventh. When, if ever, was the partnership between you and L. A. Mosty dissolved? How was it dissolved? Were you indebted to said Mosty at the time, or was Mosty
188 indebted to you? If he was indebted to you, on what account was the said indebtedness, and what amount did he owe you? Did you advance any money afterwards on account of the partnership business? If you did, state the amount, and for what purpose. What property, if any, did you receive from Mosty on the dissolution on account of said partnership, and what was its value? What became of said property, and what, if anything, did you realize from it?

Interrogatory Twelfth. If you say you received any property from the said Mosty upon the dissolution of your partnership with him,

state particularly what said property was, and in what it consisted, where was said property; state as to whether you had actual possession of the same, and when and where it was delivered, and the circumstances attending the same; and if you state you took actual possession of it, state where Mosty was at that time; state
189 what was the character of your possession, whether notorious or not; who was present at the time.

Interrogatory Thirteenth. Why did you dissolve your partnership with said Mosty? State the circumstances fully, and state the date of your dissolution, and state what you know about the solvency or insolvency of said Mosty at that time; what other debts did he owe at that time, to whom did he owe them, on what account were they contracted, and state how you know.

Interrogatory Fourteenth. If you have stated that said Mosty was insolvent upon the dissolution of the partnership with you, state what you know as to the notoriety of that fact among his creditors.

Interrogatory Fifteenth. Are you acquainted with J. H. Stevens, of Goliad county, Texas; Henry Heath, now of Red River, formerly of Gonzales county, Texas, and A. J. Covington, of Burnet
190 county, Texas? If yea, what, if anything, did you say to them, or either of them, at any time, as to a partnership or contemplated partnership between you and L. A. Mosty, or what did you say at any time to them, or either of them, if anything, in reference to any interest you had or contemplat*ing of* having in the cattle contract hereinbefore mentioned between L. A. Mosty and the defendant Houston; state when and where the conversations, if any, occurred in reference to such matter, and state what interest, if any, you ever had in said Mosty and Houston contract; state fully as to time, place, and circumstances, and explain the matter enquired of.

Interragotary Sixteenth and last. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

JNO. A. & N. O. GREEN,
H. E. BARNARD,
Solicitors for Complainants.

191 Endorsed: In ch'y. No. 9. Benj. F. Buzard and Moses Hillard *vs.* Robert A. Houston. Interrogatories by complainants to R. E. McAnulty. Filed Jan'y 13th, 1882. W. C. Robards, clerk.

In Circuit Court of the U. S. for the Western District of Texas, at San Antonio. In Chancery.

B. F. BUZARD & MOSES HILLARD
vs.
ROBERT A. HOUSTON. } No. 9.

Cross-interrogatories to be propounded to R. E. MCANULTY, a witness for the complainants.

Cross-interrogatory No. 1. If you have stated, in answer to the second and third interrogatories-in-chief, your connection with and interest in the cattle contract therein referred to between L. A. Mosty and R. A. Houston, then please state now whether it was not understood between said Mosty and yourself that said cattle contract should be included in your partnership with said Mosty, and that you should equally share the profits thereof, if any.

192 Cross-int. No. 2. If, in answer to the fourth and fifth direct interrogatories, you have stated that there was a partnership in the cattle business between said L. A. Mosty and yourself, and that the copy attached to the direct interrogatory is a true copy of your partnership contract with said Mosty, then please state now when that partnership was first formed. How long had it existed before it was reduced to writing?

Cross-int. No. 3. When did you first learn of the contract between Mosty and Houston, and when were the cattle sold by Mosty to Houston? Were they not in the same range with cattle of yours & Mosty?

The defendant objects to the seventh direct interrogatory and the answers thereto, for the reason that the matters therein inquired of are irrelevant to the issue in this case.

Cross-int'y 4. If, in answer to the eighth direct interrogatory, you have stated what was done with the fifteen thousand dollars received from Houston, and what portion of it was received by you, if any,

193 then please state also at what time the said fifteen thousand dollars were paid by Houston, giving the date of the payment as near as you can remember. Was said Mosty paid before or after the 17th day of August, 1881, and if after said last-mentioned day, you will also state whether the said sum was not invested in other cattle by said Mosty or by said Mosty and yourself.

The defendant objects to the tenth direct interrogatory and the answer thereto, for the reason that the partnership contract between the witness and Mosty is claimed to be in writing and speaks for itself, and this witness cannot vary its terms or construe it in his own behalf.

The defendant objects to that portion of the absolute direct interrogatory which seeks to elicit the state of the accounts between the witness and Mosty, or the indebtedness of one to the other, as being irrelevant to the issues in this cause and to the remainder of said interrogatory, and the one next succeeding defendant propounds.

194 Cross-int'y No. 5. If you say, in answer to the eleventh and twelfth direct interrogatories, you have stated that your partnership with Mosty was dissolved, and that you received property upon such dissolution, you will please now state whether the cattle Mosty had contracted to deliver to Houston were not delivered to or taken possession of by you at the time of the above-mentioned dissolution of your partnership with Mosty, and whether you did not thereafter dispose of said cattle; and did you know that the cattle you so received were those which had been sold by Mosty to Houston.

Cross-int'y No. 6. If, in answer to direct interrogatories thirteen and fourteen, you speak of the solvency of Mosty after the dissolution of your partnership with him, and whether it was known to his creditors, then please state now which of his creditors were aware of such fact of solvency or insolvency, speaking from your own knowledge.

Cross-int'y No. 7. Who is and has been present during the time of your answering the interrogatories and cross-interroga-
195 tories propounded to you herein besides the officer taking your answer and yourself?

JOHN HANCOCK AND
WAELDER & UPSON,
Solicitors for Defendant.

Endorsed: No. 9. In chancery. Buzard & Hillard *vs.* Robert A. Houston. Interrogatories and cross-interrogatories to R. E. McAnulty. We acknowledge service of the within interrogatories, and consent that commission may issue to take the answer of the witness to the interrogatories and cross-interrogatories according with agreement on file of Dec. 9, 1882. Waelder & Upson, solicitors for def't. Filed Jan'y 13, 1882. W. C. Robards, clerk.

In the United States CircuitCourt for the Western Dist. of Texas, at San Antonio. In Chancery.

BENJ. F. BUZARD & MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON, Defendant. } No. 9.

In the above-named case it is agreed, by and between the counsel for the complainants and the defendants, that all testimony of witnesses desired by either of said parties may be taken and re-
196 turned in the manner and by the officers provided by the laws of the State of Texas for the taking and returning of deposition in the district courts of said State.

This agreement shall in no manner interfere with any other legal mode for taking deposition in the circuit court of the United States.

The above agreement shall authorize the clerk of the court to issue commission and attach a copy of this agreement thereto.

JNO. A. & N. O. GREEN,
Solicitors for Complainants.
HANCOCK & WEST AND
WAELDER & UPSON,
Solicitors for Def'ts.

Endorsed: U. S. circuit court. In chancery. No. 9. Benj. F. Buzard and Moses Hillard *vs.* Robert A. Houston, def't. Agreement in respect to taking testimony. Filed Dec. 11, 1882. W. C. Robards, clerk, by W. McMaster, dep'y.

In the Circuit Court of the United States for the Western District of Texas, at San Antonio. No. 9. In Chancery.

I, W. C. Robards, clerk of the circuit court of the United States
197 for the western district of Texas, at San Antonio, do hereby certify that the foregoing and attached thirteen pages of manuscript, numbered in the margin of said pages from 1 to 13 (one to thirteen) 1 *to* 13, both inclusive, contained a full, true, and correct copy and transcript of the original and cross-interrogatories and copy of agreement in respect to taking depositions in the case of B. F. Buzard and Moses Hillard *vs.* Robert A. Houston, all of which appears from the records of said court now in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit court of the United States of America for the western district of Texas, at San Antonio, at my office in said city of San Antonio, this 13th day of January, A. D. 1883.

[L. S.] W. C. ROBARDS,
Clerk of the U. S. Circuit Court, W. D. T., at San Antonio.

Endorsed: No. 9. In U. S. circuit court, western district of Texas. Benj. F. Buzard & Moses Hillard *vs.* Robert A. Houston. Copy of interrogatories to R. E. McAnulty.

198 In the Circuit Court of the United States for Western District of Texas, at San Antonio.

BENJ. F. BUZARD and MOSES HILLARD *vs.* ROBERT A. HOUSTON.

Suit pending in said court in chancery, No. 9.

By authority of the commission directed to me and interrogatories accompanying the same, which are hereto attached, from the clerk of the United States circuit court for the western district of Texas, at San Antonio, in case No. 9, in chancery, Benjamin F. Buzard and Moses Hilliard against Robert A. Houston, now pending in said court, I caused to come before me, at my office at Albany, in Sha-k*le*ford county, State of Texas, R. E. McAnulty, the witness therein named, a resident of Shackelford county, State of Texas, who being by me duly sworn to speak the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories in said case propounded to him, proceeded to answer the same, as follows:

199 To the first interrogatory the witness answers: My name is R. E. McAnulty; I am thirty-four years old; I reside at Albany, Shackleford county, Texas; I am acquainted with plaintiff, Benj. F. Buzard and defendant, Robert A. Houston; I am not acquainted with Moses Hillard; have heard of the object of this suit; have heard that the object of the suit was to cancel or rescind a cattle

contract between Houston and L. A. Mosty, which was assigned to plaintiffs, or something of that kind.

To the second direct interrogatory the witness answers: I don't know anything of my own knowledge about the contract; have heard Houston say that he made a contract with L. A. Mosty, and have heard Mosty say that he made a contract with Houston concerning cattle; don't know the date of the contract between Houston and Mosty; have heard that it was made in August, 1881. I don't know its terms and conditions, only from what I have heard Mosty and Houston say about it. I never had any connec-
200 tion with or interest in said contract whatever. The first I knew or heard of the contract was from the statements made by Houston and Mosty in Dodge City, Kansas, on or about the day when they said that the contract was made; that is to say, about August, 1881.

To the third direct interrogatory the witness answers: I have stated in my answer to the 2nd interrogatory that I know nothing of my own knowledge of the terms and conditions of said contract, and that I never had any connection with or interest in said contract; I had no connection, interest, or responsibility with or in said contract. There was no partnership relation existing between Mosty and myself at the time said contract was made. There was a partnership formed between Mosty and myself on the 17th day of August, 1881, but said contract of partnership between Mosty and myself did not affect, concern, or embrace said contract between Mosty and Houston or any other pre-existing contract between Mosty and other parties. I was not to receive any
201 benefit whatever from said contract between Houston and Mosty, and did not assume any responsibility therefor. I never had any partnership contract or any other contract with Mosty at any time affecting or concerning said contract between Mosty and Houston.

To the 4th direct interrogatory the witness answers: I entered into a partnership with L. A. Mosty in the cattle business at Kansas City, Missouri, on the 17th day of August, 1881: the terms of the contract are embraced in the original contract (I mean the original and not the copy), which is attached to this deposition, marked in the margin "Exhibit A," (for this exhibit see page 212) and also marked in red ink thus + in the margin; it was ended on October 7th, 1881, at Fort Worth, Texas, by a dissolution of the partnership, for the reason that Mosty did not comply with the terms of the contract of partnership, and was paying too much for cattle. I had furnished the money and he was to do the buying, selling, &c. I make said original contract, marked Exhibit "A," and also marked + in red ink a part of my answer to this 4th interrogatory.

202 To the 5th interrogatory the witness answers: I have examined the paper hereto attached, marked "Copy A," and find that same is a true copy of said contract of partnership between Mosty and myself in all things save a discrepancy in the middle name of the first subscribing witness. I am the R. E. McAnulty referred to, and L. A. Mosty, formerly of Lampasas county,

Texas, is the Mosty referred to. The original contract (that is to say, one of the duplicate originals) is now in my possession, and the same is hereto attached at the end of my deposition as requested, and is marked Exhibit "A" in the margin, and is also marked as stated before, thus +, in red ink.

To the 6th direct interrogatory the witness answers: The said contract of partnership between Mosty and myself was made and executed at Kansas City, Missouri, on the day it bears date, to wit, August 17th, 1881.

I never had any other contract of partnership with said L. A. Mosty in my life.

To the 7th direct interrogatory the witness answers: At
203 the beginning of the said partnership I placed in the Merchants' National Bank of Kansas City, Missouri, fifty thousand ($50,000.00) dollars, which sum Mosty drew out. On September 20th, 1881, I paid to Mosty in person at Albany, Texas, six thousand ($6,000.00) dollars. I afterwards paid out fourteen thousand ($14,000.00) on cattle which Mosty had bought on account of the partnership and failed to pay for, making the sum of seventy thousand dollars in cash that I paid to Mosty and for cattle on account of the partnership. Mosty never paid to me a cent of money on account of the partnership, and never returned to me a cent of said sums in money. I received from Mosty at time of dissolution of partnership a bill of sale to the cattle Mosty had purchased with my money, from which I realized the sum of forty-four thousand ($44,000.00) dollars in money, and for which there is now due me the sum of fourteen thousand dollars from a party to whom I sold
a part of the cattle, leaving me a loss of twelve thousand
204 dollars, besides various expenses.

To the 8th interrogatory the witness answers: I don't know that Mosty received any money from Houston. If he did receive any money from Houston I do not know the amount, and I do not know what Mosty did with the same. I know that I never received any part of it at any time.

To the 9th interrogatory the witness answers: I was in no way bound as a partner or otherwise for the fulfillment of said contract between Houston and Mosty, and I know nothing about said contract save from the street talk I had with Mosty and Houston about the same, and I never handled any of the money arising from said contract.

To the 10th interrogatory the witness answers: As I have stated before, our partnership commenced on the 17th day of August, 1881, and ended October 7th, 1881. It was understood between us that
he was to buy steer cattle, and nothing but steers. This was
205 a verbal agreement. He bought stock cattle and steers. This was one cause of the dissolution; that is to say, because he bought stock cattle contrary to our verbal agreement.

To the 11th interrogatory the witness answers: The partnership was dissolved on the 7th day of October, 1881, by mutual consent. I was not indebted to Mosty in any sum; he was indebted to me and executed and delivered to me the bill of sale above mentioned to

cover said indebtedness. He was indebted to me in the sum of seventy thousand dollars, as above stated, on account of moneys I had advanced him for the purpose of buying cattle and on account of cattle he had bought but had not paid for as above set forth.

I never advanced any more on account of the partnership after the said dissolution.

To the twelfth interrogatory the witness answers: I received from Mosty a bill of sale to cattle, the actual number not known, which I sold for the gross sum of fifty-eight thousand dollars, of which sum I have received four thousand dollars.

To the twelfth interrogatory the witness answers: The property I received consisted of cattle about thirty-eight hundred (3,800) head were then on the road to the Pan Handle under herd, of
206 which actual possession was delivered to me. The balance consisted of cattle running on the range in Lampasas and adjoining counties in Texas, of which I received possession by what is known as "range delivery;" the 3,800 head before mentioned on the road to the Pan Handle, I paid all expenses on same after Oct. 7th, 1881, and the persons in charge of the herd were considered my employés and agents. At the time of the dissolution at Fort Worth, Texas, Oct. 7th, 1881, at which time possession was given me individually, Mosty was in Fort Worth, Geo. B. Loving was present. My possession was open and notorious. I was in possession before that date so far as one partner can be deemed to in possession of the partnership property.

To the 13th interrogatory the witness answered: I dissolved my partnership with Mosty for the reason that he was not buying the kind of cattle he had verbally agreed with me to buy and because he was paying prices for cattle which I deemed too high; and for the further reason that I heard that some of his individual checks had been dishonored. I did not know at that time whether he was sol-
207 vent or insolvent. From the way he did business I could not tell. Since that time I have ascertained that he was indebted to G. W. Littlefield, the Lee-Scott Cattle Company, Torres & Gudgell, and Fairchild; said debts being contracted on account of cattle.

To the 14th interrogatory the witness answers: I do not state that said Mosty was insolvent at the time of dissolution. I had heard before that time that he had made contracts with Littlefield and Houston. Heard since about his other indebtedness. Mosty has no property that I know of subject to execution, but I understand that he has plenty of money.

To the 15th interrogatory the witness answers: I am acquainted with Mr. Henry Stephens, who lives somewhere in south Texas; don't know where his home is; he is a cattle man. I have no recollection of any acquaintance with Henry Heath and A. J. Covington. I may have met them, but do not recollect them at this time. I never had any conversation with them upon the subject of my copartnership with Mosty, and never had any conversation with them or either of them with regard to my connection with or liability on the contract between Houston and Mosty, as I never had any con-

nection with the same and never contemplated having any
208 such connection, interest, or liability with said Houston & Mosty contract.

To the 16th interrogatory the witness answers: I have stated all I know about the matter in the foregoing answers

And the said witness proceeded to answer the cross-interrogatories hereto attached, as follows:

To the first cross-interrogatory the witness answers: I never had anything to do with said contract between Houston & Mosty; never agreed to include the same in my partnership contract with L. A. Mosty; never agreed to share in either the profits or losses of the same. On the contrary, I told Mosty at the time I entered into co-partnership with him that I did not wish to have any thing to do with his antecedent business.

To the second cross-interrogatory the witness answers: My partnership contract with L. A. Mosty was formed on the 17th day of August, 1881, and was reduced to writing on the same day.

To the 3d cross-interrogatory the witness answers: I first learned of the contract between Mosty and Houston at Dodge City,
209 Kansas, through conversation had with Houston & Mosty about the time said contract was made, if it was made at all; that is to say, some time in the early part of August, 1881. If any cattle embraced in the Houston and Mosty contract ran in the same range with cattle belonging to myself and Mosty, I do not know it. I do not know anything about any such cattle embraced in the Houston & Mosty contract.

To the 4th cross-interrogatory the witness answers: I do not know anything about the fifteen thousand dollars mentioned as having been paid by Houston to Mosty. If said sum, or any other sum, was paid by Houston to Mosty I do not know what Mosty did with the same. I do know that Mosty and myself together never did invest said sum.

To the 5th cross-interrogatory the witness answers: I never received any cattle from Mosty which had been sold or contracted by Mosty to Houston. If Houston had any sort of right or claim to or interest in the cattle which I received from Mosty at the time
210 of said dissolution I did not know it then and do not know it now.

To the 6th cross-interrogatory the witness answers: I do not state that Mosty was solvent or insolvent at the time of the dissolution, or afterwards; and I do not know which of his creditors, if any, were aware of his pecuniary circumstances.

To the 7th cross-interrogatory the witness answers: No one has been present during the time I have been answering the above interrogatories, save the officer before whom my deposition is taken.

R. E. McANULTY.

THE STATE OF TEXAS, *Shackleford County:*

I, A. A. Clarke, a notary public within and for *the* Shackelford county, Texas, do hereby certify that by authority of the commission directed to me, and interrogatories accompanying the same,

which are hereto attached, from the clerk of the circuit court of the United States for the western district of Texas, at San Antonio, and attested by the Chief Justice of the Supreme Court of the
211 United States, in the case of Benjamin F. Buzard and Moses Hillard against Robert A. Houston, in chancery, No. 9, pending in said court, I caused to come before me at my office in Albany, Schackleford county, Texas, the witness therein named, R. E. McAnulty, a resident of said Shackelford county, Texas, who, being by me duly sworn to speak the truth, the whole truth, and nothing but the truth, answered the several interrogatories and cross-interrogatories in said case propounded to him as above set forth, which answers I caused to be reduced to writing, as above set forth, in the presence of said witness, and they were sworn to and subscribed before me at my office in said town and county on this the 17th day of January, 1883, by the said witness, R. E. McAnulty.

In witness whereof I have hereunto set my hand and official seal on said day.

A. A. CLARKE,
Notary Public, Shackelford County, Texas.

212 EXHIBIT A. (See page 201 McAnulty's deposition.)

Articles of copartnership made and entered into this 17th day of August, 1881, by and between R. E. McAnulty, of Austin county, Texas, and L. A. Mosty, of Lampasas county, Texas, witnesseth:

1st. That said parties have this day entered into a copartnership for the purpose of raising, buying, and selling stock in the State of Texas and adjoining Territory.

2nd. That said copartnership shall be known as "McAnulty & Mosty," and shall continue until dissolved by mutual consent or death of either party.

3d. That all stock raised or bought by said firm shall be branded thus (X) on the left side of the animal, and every animal so branded shall be known as the property of said firm.

4th. The capital stock of said firm shall be fifty thousand dollars or more, contributed as follows: Said McAnulty is to furnish the sum of fifty thousand dollars, or more, and said Mosty is to
213 give his personal attention to said business, such as managing and superintending ranches, hiring help, buying and selling stock, and everything necessary to be done in order to successfully prosecute & carry on said business.

Witness our hands and seals this 17th day of August, 1881.

(Signed in duplicate.)

R. E. McANULTY. [SEAL.]
L. A. MOSTY. [SEAL.]

Attest:
JNO. S. HARBISON,
R. L. HARPER.

Endorsed: No. 9. In chancery. Benj. F. Buzard and Moses Hilliard *vs.* Robert A. Houston. Deposition of R. E. McAnulty. Opened and filed March 5th, 1883. W. C. Robards, clerk.

And here complainants rested. The defendants thereupon, on the hearing of this cause, offered and read the following evidence:

214 First. The defendants offered and read the deposition of G. N. Dilworth, a witness for the defendant, taken before George Paschal, Esqr., examiner in equity for the circuit court of the United States for the western district of Texas, before referred to, with the proceedings relating thereto, which depositions is as follows:

G. N. DILWORTH, a witness for the defendant, was then produced, and having been by me first duly sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows, upon direct examination:

My name is G. N. Dilworth; I am past forty-five years of age; I reside in Gonzales county; I am a banker by occupation; I was engaged in banking in August and September, 1881; about September 30th, 1881, I received a *a* draft from Ball, Hutchins & Co., drawn by L. A. Mosty on Robert A. Houston, for eight thousand five hundred dollars. Mr. Houston was not in town at the time I received it, and I had to hold it for several days until he came in. He came in on October 7th, 1881, and instructed me to pay the draft and charge it up to him, which I did on that day. About this time and up
215 to November first and second, 1881, Houston kept his banking account with me.

(Plaintiffs' counsel objects to the above question and answer, because the same is irrelevant.)

The witness then proceeded as follows:

At this time Houston was indebted to me about twelve thousand dollars; that is, from about the 7th of October to about the first or second of November. I knew nothing of Mosty's financial condition about November 1st or 2d, except I believed him to be good. I knew nothing to the contrary until some time about the last of November. I gave Houston advice how to transfer the Mosty contract. I advised him to transfer it without recourse, and he remarked that he did not know how it ought to be done. I told him to get a lawyer to draw up the transfer. I told him if, in the spring, there should be any trouble about the number of cattle or their delivery, he would have to go up there and see about it if he sold the contract and guaranteed. This conversation took place a day or two before the transfer to complainants.

(Plaintiffs' counsel objected at the time to all the foregoing conversations between the witness and defendant, because neither
216 of the complainants were present at the time of the conversation, and therefore it is irrelevant.)

The witness then proceeded as follows:

At the time I gave Houston the advice to transfer the Mosty contract I had no knowledge of Mosty's insolvency, and heard no remarks to that effect, and no suspicion that he was insolvent.

(Plaintiffs' counsel objects to the foregoing answer of Mosty's financial condition, because the same is irrelevant.)

Cross-examination:

The witness then proceeded to testify upon cross-examination as follows:

I first spoke of the transfer of the contract; he told me — had sold the contract, and was coming up to San Antonio to close the trade, and I then suggested the method how it should be done; he told me — had sold or was about to sell the contract, and not the cattle; I don't remember the date of the conversation; he was then preparing to come up to close the trade; he had left his home and was then on his way up; I knew Littlefield had a contract with
217 Mosty for some cattle, and the time of delivery had been postponed, the reason given being on account of dry weather; I mean to say this was not a contract made direct with Mosty & Littlefield, but with Mosty and Bennett, and that it was transferred by Bennett to Littlefield; of my own knowledge I know nothing of Mosty's financial standing only from general reputation.

Re-examination:

Mosty's general financial reputation was that of a solvent responsible man up to the latter part of October or first of November, 1881.

Recross-examination:

I knew nothing of Mosty's financial reputation, except at Gonzales', and I got my information from men who hed dealings with him; the Bennett Bros.—I believe there are three of them in the firm—and Louis Robinson are persons who I heard speak of Mosty's financial condition, besides Houston & Littlefield, and there were others whose names I cannot now recall.

G. N. DILWORTH.

The testimony of the witness was then read over to him, and was by him pronounced correct, and the same was sworn to and subscribed before me, this 31st day of October, A. D. 1882.

GEORGE PASCHAL, *Examiner.*

218 Second. The defendant offered and read the deposition of L. G. Robinson, a witness for the defendant, taken before the said examiner before referred to, which deposition and proceedings are as follows:

L. G. ROBINSON, a witness for the defendant, was then produced, and having been by me duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows upon direct examination:

My name is L. G. Robinson. I am forty years of age. I live in Lavaca county, Texas. My occupation is a cow and sheep raiser. In September, October, and November, 1881, I was buying cattle in my county, in Fayette and adjoining counties. During this period I was acquainted with one L. A. Mosty. I had known him since

1877. I had had business transactions with him from 1877 to 1881. I had sold him a herd of cattle every year, and had sometimes bought cattle for him during this period. Mosty's financial standing in August and September, 1881, was good, so far as I know. In
September, 1881, I met R. E. McAnulty, and had heard of
219 him before. I met him at Bellville, Austin county, Texas.
Mr. Mosty and Mr. Bennett were present when I met him. Mr. Mosty informed me when I met him at Bellville in September, 1881, that McAnulty was a partner of his.

(Complainants' counsel objects because it is not a proper way to prove partnership, and because it is immaterial.)

The witness then proceeded as follows:

McAnulty, Mosty, and myself happened to be at Bellville in this way: I went to Bellville at the invitation of Mr. Mosty to meet Mr. McAnulty. McAnulty and Mosty were together that night, and went off together to Fort Worth, I believe on the train. They seemed to know each other. They invited me to be present that night at a business talk, but I did not go. This meeting was to be at the Manning Hotel, kept by McAnulty's father-in-law. Mosty told me in September, 1881, that he and McAnulty had bought Bob Houston's, the defendant's, yearlings, to be delivered, I think, at Fort Worth in the spring of 1882.

Cross-examination:

I know nothing of Mosty's financial standing except from my own
dealings with him. I had handled his checks for four or five
220 years. These checks were handled as a part of my individual
dealings with him. It was September 13th, 1881, when I met Mosty at Bellville. I know nothing more of the partnership between Mosty & McAnulty except what Mostly told me. I don't think he told me when the partnership commenced. He told me they had gone into a partnership some time before, and were in partnership then. My last dealings with Mosty was some time in May, 1881. In 1881 I sold about two thousand head of cows, and cows and calves for L. A. Mosty to other parties. I never bought any cattle from Mosty on my own account, nor for any one else.

L. G. ROBINSON.

The testimony of the witness was then read over to him, and was by him pronounced correct, and the same was signed and sworn to before me, this 31st day of October, A. D. 1882.

GEORGE PASCHAL, *Examiner.*

Third. The defendant offered and read the depositions of S. R. Walker, a witness for the defendant, taken before said examiner as aforesaid, which deposition is as follows:

221 S. R. WALKER, a witness for the defendant, was then produced, and having been duly sworn to tell the truth, the whole truth, and nothing but the truth, testifies as follows:

My name is S. R. Walker, sometimes called Ruff Walker. I live

at Gonzales. I will be 28 in December. I am a stockman. Bob Houston and I came to San Antonio together at the time the first memorandum contract between Buzard & Houston was made, and at that time Bob Houston and myself were very intimate, and I know considerable of his business, and on the way up here he spoke of this Mosty cow trade, and said that he would have to sell those cows or make his spring drive (meaning the spring of 1882) lighter than he wished, and that he would rather sell the cows and make full drives, which he expected to do if he could get a certain figure for them which he specified, but I disremember the exact figure. After getting to San Antonio he met Buzard and made a trade with him to sell the bunch of cows. I was present and saw the outlines of the contract drawn up and five hundred dollars paid by
222 Buzard to bind the trade, which was to be closed the Tuesday of the following week. The next day, I think it was, we went home, and Bob Houston was taken sick and got me to come up on the Tuesday when the contract was to be closed and see Buzard and set a time for Houston to meet him. I came up on the day the contract was to be closed and met Buzard, and we set the time to be from the 12th to the 15th of November, and when Buzard got here on November 12th or 15th, whichever it might be, he was to telegraph to Houston. Then I returned home and Houston, myself, and several others came up to the fair at San Antonio a few days afterwards, and on our arrival here at night Bob Houston met Buzard. I saw Buzard and Houston together the next morning after our arrival; this was several days before the time fixed between Buzard & myself for their meeting, and it was the time that the trade between them was closed. This was a new trade, being a transfer of the Mosty contract, and the old trade was that Houston was selling this number of cows—the Mosty cows.

223 I have been acquainted since the early part of last season, nearly two years, with Mosty. I never had any business with him. I met Mosty and McAnulty together at Bunham, in September or August, 1881. As far as my knowledge went Mosty's financial standing in September, and up to October, was good. I did not hear of his failure until some time after the trade was closed between Buzard and Houston.

Cross-examination:

I know nothing about the matter of the new trade, except what Houston told me. I know that Buzard spoke about the trade being closed, but he did not speak to me of the nature of the new trade. Some stockmen about Gonzales had dealings with Mosty. His financial standing seemed to be good at that time. If it had been doubted I should have known it, I think.

S. R. WALKER.

The testimony of the witness was then read over to him, and was by him pronounced correct, and the same was sworn to and subscribed before me, this 31st of October, A. D. 1882.

GEO. PASCHAL, *Examiner.*

224 Fourth. The defendant offered and read the deposition of Robert A. Houston, a witness for the defendant, taken before said Examiner Paschal as aforesaid, with exhibits attached thereto, which is as follows:

ROBERT A. HOUSTON, the defendant, was then duly sworn to tell the truth, the whole truth, and nothing but the truth, and testifies as follows upon direct examination:

I am thirty-three years of age; I am a cattle raiser; I reside at Gonzales, Texas. I was in San Antonio in October, 1881—some time between the first and the tenth of the month, as near as I remember. I met Major Hinkle while I was here, and I asked him if he knew of any one who wanted to buy some cows. He said he did. I told Hinkle if he met any one who wanted to buy the cattle to sell them for me—one thousand at Gonzales, and one thousand five hundred cows and fifty bulls at Lampasas. During that evening I sold the Gonzales cows to Tom Coleman and H. D. Sullivan, to be not less than seven hundred or more than one thousand head, for fifteen dollars a head. While we were fixing the
225 contract with Mr. Sullivan after supper Major Hinkle walked up with Mr. Buzard and introduced me to him, and says: I have sold your cows to Captain Buzard for fifteen dollars and fifty cents per head. I told him it was all right; I was glad that he had sold them. Buzard paid me there five hundred dollars to bind the contract we were to enter into. I think we were to fix up the contract five or six days afterwards. At the time appointed to draw this contract I was quite sick, but sent S. R. Walker to San Antonio to meet Mr. Buzard, and to tell Mr. Buzard why I could not get here, and to tell Mr. Buzard to appoint any time after a few days and I would meet him at any time he might appoint. He sent me word to come to San Antonio and he would meet me here at any time between the 12th and 15th of November, 1881. I came up to the San Antonio fair on the 31st of October, and I met Mr. Buzard at Hord's Hotel that night. I told him I was glad to meet him, as we could fix up our contract at this time and it would save me another trip to San Antonio. He said he guessed we could arrange
226 the matter at this time. We were talking at Hord's Hotel after supper on the night of the 31st, and I asked him where we should meet the next morning to fix up that contract. He said we would get together at the hotel next morning and go somewhere and arrange it. I then said to him: Mr. Buzard, I have got a proposition to make you. I said: If you will take this Mosty contract off of my hands and release me entirely, I will deduct twenty-five cents a head off of each cow and bull. He said: Where is your Mosty contract; let me see it? I handed it to him. He read it, and he asked me where Mosty lived. I told him in Lampasas. I told him that he ought to have known Mosty; that he was a large cattle dealer, and I had heard it said frequently he handled more cattle in 1881 than any Texas man on the market. He handed me the contract back, and said: I will give you an answer in the morning.

He came to me the next morning, November 1st, about 9 o'clock,

and said: I am ready to fix up the contract; are you? I said: Yes, sir. He said: Come, let us go over to Hinkle's office. We
227 sat down in Hinkle's office, and Buzard said: Mr. Houston, let me see that contract again. He read it over twice, and said if I would let the interest on the fifteen thousand dollars on the Mosty contract go with the twenty-five cents p'r head, and I said I would to close the trade. He said he did not like to make a trade of that kind much; he knew I was good for the amount of money he had to advance, and Mosty he did not know anything about. I told him by paying me back the fifteen thousand dollars I had paid out, and releasing me entirely, and giving me his obligation for the difference, which was one dollar and a quarter a head, payable on the faithful compliance of the contract, I would give him the contract—which he did.

He said he did not know if Mosty was good or not. I told him I considered him good; that I thought he was good for his contracts; that he had made two contracts of the same kind with friends of mine in my county, and the parties had told me that Mr. Mosty was a gentleman, and had carried out the contracts with them perfectly.

228 He asked me who the parties were. I told him Bennett Bros. and Miller, Sayers & Kokernut. I told him I considered him as good as myself, as he had handled twice as many cattle in 1881 as I had. I told Buzard that Mosty had told me, as we were coming from Kansas together, that he was a partner of R. E. McAnulty in all their cattle dealings; that he said they were partners, but the contract did not show they were partners, but Mosty had told me that they were partners. I told him the way that Mosty came to tell me they were partners was that we were talking about a herd of yearlings I had sold to McAnulty, amounting to twenty-five hundred head. He told me that Mc. had given me too much for the yearlings; that they were going to carry them West and grow them, and did not expect to put them on the market.

After he accepted the contract we went off to hunt a lawyer to write the contract. I told him we could get Judge Smith. We did so. Told him how we wanted the contract written. He wrote it.

229 Buzard gave me a draft for the amount of money, and we separated. This was on the first of November, 1881. The next time I saw Mr. Buzard was between the 16th & 20th of November, at Gonzales. He told me he was hunting me, that Mosty had broke, and he wished me to get that money for him. I told him that Mosty was the man that owed him the money, to go after him. He remarked that he might just as well go after a wet dog; that he had been to Lampasas, and the property was all hid, smuggled, and he thought his best chance was to work on me. I told him I owed him nothing. He said somebody owed him, and he didn't propose to pay something for nothing. I asked why he didn't come to me before he went to Mosty; if I owed him, why he went to Mosty. He said because he thought he would try Mosty, and if he could get it out of him he would do so. He said, How about that partnership? Did you not tell me that McAnulty was a

partner of Mosty? I told him no, that I had told him that Mosty had told me so coming down from Kansas City on the train, and Buzard said he knew I had Mosty and McAnulty in partnership in same way, and he did not remember how it was. Mr.
230 Henry Heath, a merchant of Gonzales, was present during this conversation. I had no further conversation with Mr. Buzard about the matter after this. He told me he would sue me to the extent of the law, as he was a lawyer himself. On November 10th, 1881, I had an appointment to meet M. K. Wolf in Austin, and he told me in presence of W. S. Carothers that he thought that Mosty was crippled financially. I asked him why he thought so, and he said a friend of his had informed him of a draft being protested. I had never heard of Mosty's insolvency before. Littlefield nor any one else had ever told me of Mosty's insolvency before this. I believe the statement I made to Buzard regarding the financial standing of Mosty to be true, and all other things I stated to him.

At this point the further taking of the depositions in this cause was adjourned until to-morrow, November 1st, at 9 o'clock a. m.

GEORGE PASCHAL, *Examiner.*

231 SAN ANTONIO, TEXAS, *November 1st*, 1882.

The depositions in this cause was resumed at 9 a. m., pursuant to adjournment.

ROBERT A. HOUSTON, a witness for the defendant, was then recalled to the stand, and continued to testify, upon direct examination, as follows:

The difference in the proposition I made to Buzard on October 31st and the original agreement was twenty-five cents p'r head and the interest on the fifteen thousand dollars I had advanced to Mosty, and the further difference that this was a transfer of the Mosty contract without recourse on me, and the original contract was one in which the cattle had to be delivered by me. My reason for discounting the Buzard draft was that I was owing Mr. Dilworth between twelve and fifteen thousand dollars, and they discounted it at the same rate of interest I was paying Dilworth, and I took the money home and saved exchange.

This enabled me to strengthen my credit with my banker, Dilworth, and to make additional purchases in carrying out my busi-
ness. I wanted money to make an advance to Porter and
232 Newsome for about sixteen hundred yearlings. I never offered to sell the Mosty contract to any one but Buzard. I offered to sell Alonzo Millett the Mosty cows and the Gonzales cows, and made the same offer to Tom and John Davis to sell the cows; this was between October 1st & 10th, 1881.

Davis offered me fourteen dollars a head, to be delivered at his ranch in Atascosa & Wilson counties, and Millett offered me the same, or less, and wanted them delivered in the fall of 1881, while my contract was for the spring delivery of 1882.

I never offered to sell the contract, without recourse, to any one except Buzard. The only reason given by Millett why we couldn't

trade for the Mosty contract was that I couldn't deliver them in the fall, and he offered less money than the cattle cost me.

Cross-examination:

When I left home to come to the fair I had no idea of closing the original contract at that time, because I had no idea I would then meet Buzard, as the arrangement had been made with Walker to meet me between the 12th and 15th of November, and this
233 was the 31st of October. When I left home to come here I did not come to sell the Mosty contract; I came to attend the fair. I didn't expect to sell the Mosty contract on this trip to anybody, as I had sold the cattle to Buzard, and they were his cattle. The first contract I considered a sale of the Mosty cattle to Buzard, and I offered them to no one else. The Mosty cattle were the cattle of the first trade. I told him they were Lampasas cattle; those were the only cattle of that description I owned in Lampasas county. I got here between seven and eight o'clock on the night of October 31st last. I don't know what time that day Buzard came here. I don't remember that he told me when he got here. I first made the proposition that night to close up the trade we had made. He said we could do it, but the money he was to give me he had used for some other purpose, and could not put it up before fourteen or fifteen days, but if it would suit me he could give me a draft payable in fourteen or fifteen days. I did not state to him at this time
234 that it made no difference to me, as I did not need the money just then, and I did not state this to him at any time. I told him if he gave me a draft payable in fourteen or fifteen days that it could be arranged in that way, and that we could go on with our contract. At the time I made this trade with him I do not remember of knowing that Buzard was fencing a pasture and wanted the cattle for breeding purposes. I did not know at this time that Buzard had a partner, and I don't remember that I knew that he had a partner at the time the contract was assigned; he did not tell me so, or any one else, and I don't remember whether the contract shows it or not, or whether the draft showed it. Buzard and myself had completed our agreement, at Hinkle's office, before we went to get a lawyer to draw up the assignment. I don't remember whether there was or was not any change made after we left Hinkle's office. We were at Hinkle's about ten or fifteen minutes. Major Hinkle was there a part of the time, and told Buzard that Mosty was good and solvent, and did most of the talking himself, and told Buzard
235 he knew Mosty better than I did. Hinkle had a good deal to do with the trade, and advised Buzard to take the assignment. He introduced me to Buzard. I had never known Buzard before, and Hinkle said he had sold the cattle to Buzard before Buzard and I spoke about the subject. This was in reference to the first contract. Hinkle was nobody's agent in the sale of this cattle that I know of. I told him if he could sell the cattle to do so. I told Hinkle after the sale was made that I would give him a suit of clothes, and he came back and said he needed the money more than he did the clothes, and I then paid him twenty-five dollars in money.

I saw Hinkle on the night of October 31st, 1881. I did not tell him on this night about my new proposition to Buzard. I heard him and Buzard speaking privately about it. I gave Hinkle twenty-five dollars for the first trade. I heard some of the conversation between Buzard and Hinkle. If Buzard had not accepted the transfer of the Mosty contract I was ready to close up the original contract
236 on the morning of November 1st, and I told Buzard so. Our negotiations were not at an end concerning the first contract until Buzard agreed to accept the assignment of the Mosty contract and release me from the first contract. Buzard agreed to accept the transfer of the Mosty contract about 9 o'clock on the morning of November 1st. I don't remember if Buzard agreed to accept the transfer of the Mosty contract before or after the conversation with Hinkle, on that morning before referred to, in which Hinkle spoke concerning the solvency of Mosty. I did not tell Buzard before he agreed to accept the transfer of the Mosty contract that Mosty was as good or better than I was. I told him that he ought to be as good as anybody, from the number of cattle he claimed to have handled in 1881.

Question. Did you not tell Captain Buzard before he agreed to accept the assignment of the Mosty contract that you knew the Mosty contract would be filled, because Mosty then had twelve hundred—or the most of the cattle on his ranch or range in Lampasas county —in his ranch or rail brand?

237 Answer. I did not. I told Captain Buzard that Mosty would have to road-brand the cattle for me in any brand that I might name; that this was my contract, and that he (Buzard) could have the same privilege, but that Mosty told me there would be about twelve hundred of these cattle in his range or ranch brand which he called the rail brand. The rail brand of Mosty is a long bar running from the shoulder towards the flank from a foot to two feet long, and I knew this to be his brand from cattle which I had seen delivered by him in Kansas and in Gonzales county, and he (Mosty) told me it was his brand.

Question. Did you not tell Captain Buzard before he agreed to accept the assignment of the Mosty contract that you knew the contract would be filled, because R. E. McAnulty was a partner with Mosty in this contract; that you knew R. E. McAnulty was such partner in this contract, because R. E. McAnulty had told you he was a partner with Mosty in this contract?

Answer. No, I never did, though I heard Buzard swear the other day that I did. I said to him as I stated before, that Mosty
238 had told me, coming from Kansas City to Denison, in August, 1881, that he and McAnulty were partners in the cattle business, also in the twenty-five hundred yearlings I had sold to McAnulty to be delivered in May, 1882.

Question. Did you at any time tell Captain Buzard what is embodied in the foregoing questions?

Answer. I never did.

Question. Did not Captain Buzard demand when he came to Gon-

zales to see you that you should pay back to him the fifteen thousand dollars he had paid to you?

Answer. He did, and I told him Mosty owed him the money. I did not — and to go to him. He said he had been to Mosty and could get nothing, and he thought he could work on me.

Question. Did not Captain Buzard, on the morning of the first day of November, 1881, refuse to accept an assignment of the Mosty contract unless you would guarantee the fulfillment of it; and did you not upon that refusal state that the reason why you wished to assign the contract instead of completing the one already under negotiation was because at that time (that is between May 1st
239 & 10th, 1882) you would be employed in other transactions and could not well attend to the completion of said contract by said Mosty, and that it would be a useless thing for you to attend to the delivery of the cattle by Mosty and then hand them over immediately to Buzard & Hillard?

Answer. Buzard did not refuse to accept an assignment of the Mosty contract unless I would guarantee the fulfillment of it; but accepted it, and said he would accept it if I would give him the interest on the fifteen thousand dollars that Mosty would owe. I told him that I would be busy receiving and branding cattle about that time in Gonzales county, and it would suit me to get him to take this contract, and that I would deduct the twenty-five cents pr. head on the previous contract if that suited him; if not, I would go on with the first contract; and he said if I would give him the interest he would do it. It would have cost me about this amount to have gone and received the cattle, but I did not so tell Buzard that I remember of. I did not tell Buzard that I could not well
240 attend to the completion of the contract by Mosty, and that it would be a useless thing for me to attend to the delivery of the cattle by Mosty and then hand them immediately over to Buzard & Hillard.

Question. Did not Captain Buzard state at the time he accepted this transfer that he (Buzard) knew nothing of the solvency of Mosty, but that he would take your word for it; and also take your word that McAnulty was a partner with Mosty in this contract; and take an assignment of this contract to accommodate you and save you the trouble of going up there to receive the cattle?

Answer. Buzard did not say at the time he accepted this transfer that he knew nothing of the solvency of Mosty and would accept my word for it. No such conversation passed between Buzard and myself that he would take my word that McAnulty was a partner with Mosty in the contract, and it could not have happened, because I never told Buzard McAnulty was a partner with Mosty in the contract. I told him that Mosty had told me he was a partner with McAnulty in the cattle business, but I did not tell him
241 that Mosty had said he was a partner in this contract. Buzard did not tell me that he would take an assignment of this contract to accommodate me and save me the trouble of going up there to receive the cattle. I paid him for all the accommodation he did for me. Buzard and myself held our conversation in Gon-

zales in front of Heath's store, sitting on a ladder, and Heath was standing in the door not five feet from us and heard the conversation. I think we met at the bank; but we had all our conversation about the matter in front of Heath's store.

Re-examination:

(A paper, dated November 1st, 1881, and purporting to be signed by Buzard and Hillard, was here shown the witness, who, after examining the same, identified it, and the same is hereto attached and marked Exhibit "D.")

EXHIBIT "D."

SAN ANTONIO, TEX., *Nov. 1st*, 1881.

This is to witness that we this day become the assignee of
242 Mr. R. A. Houston, of all his rights under and by virtue of a contract for delivery of cattle between him and L. A. Mosty for the consideration of $15,000.00 paid down, and the further sum of eighteen hundred and thirty-seven dollars & $\frac{50}{100}$, to be paid by us to R. A. Houston upon the final delivery to us of the cattle by said Mosty under the said contract between R. A. Houston and Mosty.

BUZARD & HILLARD.
R. A. HOUSTON.

The testimony of the witness was then read over to him, and was by him pronounced correct, and the same was sworn to and subscribed before me, this 1st day of November, 1882.

GEORGE PASCHAL, *Examiner.*

Fifth. The defendant then offered and read in evidence the deposition of Henry Heath, a witness for the defendant, together with interrogatories, commission, and agreement of counsel attached thereto, the said deposition having been taken by interrogatories under State practice, which deposition is as follows:

243 WESTERN DISTRICT OF TEXAS, *ss:*

In the Circuit Court of the United States for the Western District of Texas, at San Antonio.

BENJ. F. BUZARD & MOSES HILLARD *vs.* ROBERT A. HOUSTON.

Suit pending in said court. No. 9. In chancery.

The President of the United States to the clerk of the district court or any judge or clerk of the county court, or any notary public of the county of Red River, in the State of Texas, Greeting.

You are hereby authorized and empowered to cause to come before you Henry Heath, a resident of the said county of Red River, and his answers take to the accompanying interrogatories and cross-interrogatories propounded to him in a certain cause now pending in said U. S. circuit court wherein B. F. Buzard & Moses Hillard are

plaintiffs and Robert A. Houston defendant, and having reduced the said answers of the said witness to writing you will—

1st. Cause the same to be subscribed and sworn to by the said witness.

2d. You will certify under your hand and seal of office that said anwers were subscribed and sworn to before you.

244 3d. You will seal up in an envelope the answers so taken, together with the annexed interrogatories and cross-interrogatories and this commission, and endorse your name across the seal.

4th. You will endorse on the said envelope the names of the parties to this suit and the name of said witness.

5th. You will direct the package to the clerk of the circuit court of the United States at San Antonio, Texas.

6th. If the package is sent by mail you will have the postmaster or his deputy to endorse thereon over his official signature that he received it from the hands of the officer taking the same, and in all other respects you will conform to the requisitions of the statute in such cases made and provided.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court hereto affixed at San Antonio, Texas, this 12 day of December, A. D. 1882, and the 107 year of our Independence.

W. C. ROBARDS,
Cl'k U. S. Circuit Court,
By W. McMASTER,
Dep'ty.

245 In Circuit Court of the United States for the Western District of Texas, sitting at San Antonio. In Chancery.

BUZARD & HILLARD
vs.
ROBERT A. HOUSTON. } No. 9.

Interrogatories to be propounded to Henry Heath, of the county of Red River, State of Texas, a witness for the defendant.

Interrogatory 1. What is your name, age, occupation, and place of residence?

Int'y 2d. Do you know the parties to this suit, or any of them? If yea, please state which of them you do know and how long you have known them.

Int'y 3. Have you ever lived in the town of Gonzales, in this State; and, if so, when did you live there?

Int'y 4. If you have stated in answer to the last interrogatory that you lived in the town of Gonzales in November, 1881, then please state whether during that month you were present at or overheard a conversation between Capt. Buzard, one of the plaintiffs in this case, and Robert A. Houston.

246 Int'y 5. If you say you were present at or overheard such a conversation, then please state, as near as you can remember,

the day of the month when the same took place and what each party said. State particularly whether in that conversation anything and what was said by the parties in relation to a partnership between R. E. McAnulty and L. A. Mosty; what question or questions were asked by Capt. Buzard and what answer or answers were given by Houston relative to said partnership. State all that was said by both Capt. Buzard and Mr. Houston.

Int'y 6. If, in answer to the last interrogatory, you have stated that you were present at or overheard a conversation between said Buzard and said Houston, and have stated fully what the conversation was at the time at which it occurred, then please state now at what particular point or spot the said conversation took place, how and where the parties were sitting or standing, and where you were sitting or standing during the same. Be as minute as you can in answering this question.

247 Int'y 7. In answer to this interrogatory please state any other matter or thing that you may know relative to the subject-matter of these interrogatories which may benefit either party to this suit, as fully as if you had been specially interrogated thereto.

C. S. WEST AND
WAELDER & UPSON,
Solicitors for Defendant.

In the Circuit Court U. States for the West. Dist. Texas, at San Antonio. In Chancery.

BENJAMIN F. BUZARD and MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON, Defendant.

Cross-interrogatories propounded by the complainants to Henry Heath, a witness for the defendant.

Cross-int'y 1. If you ever lived at Gonzales, Texas, state how long; where did you live, in Gonzales or the county of Gonzales; with whom did you live; name each person you lived with there, and how long you lived with each; what did you do there; what
248 was your business there; and, if you have pursued any more than one business there, state how many different kinds of business you pursued, and who employed you. Did you ever live with the defendant; if yea, in what capacity, and how long?

Cross-int'y 2. What are you doing or what business are you engaged in where you now live; with whom or at whose house do you live, and in whose employment are you now?

Cross-int'y 3. If, in answer to direct interrogatory 3, you say you overheard a conversation at Gonzales between the plaintiff, B. F. Buzard, and the defendant, Robert A. Houston, state how you happened to overhear it; how far off from the parties were you; state your exact locality at that time and the exact locality of Mess. Buzard & Houston? Did they talk loud or softly; were they angry with each other and vociferous in their talk or not?

Cross-int'y 4. Were you invited by either of the gentlemen to hear what they had to say; if so, which one invited you to
249 do so; are you sure you heard all they had to say to each other at that time?

Cross-int'y 5. If you say you overheard any conversation between them, state all you heard them say; state the very words; begin with the conversation and state what Buzard said to Houston, and what Houston said to Buzard; give their words and not your own, or your understanding of what they said; and now say whether you have given the words used by each.

Int'y 6. Who was present at the time you heard the conversation; was anybody? If you say anybody else was, state who it was; give his name and place of residence; did such person or persons hear what you did of the conversation between Capt. Buzard and Mr. Houston?

Cross-int. 7. How came Mr. Houston to know that you overheard the conversation? Did you tell him so; if you did, when and where was it you informed him; did you inform him by letter or verbally?

250 Cross-int'y 8. If you say you overheard the conversation spoken of in direct interrogatories 4 & 5 of defendant, and if you further say you were not invited by either Capt. Buzard or Mr. Houston to be present and witness the conversation, please answer and say if you did not know it was highly improper for you to have done so. Please explain your conduct in this matter.

Cross-int'y 9. Was not Capt. Buzard a stranger to you, and was it any of your business to overhear what he had to say in a matter of business to Mr. Houston?

Cross-int'y 10. Who is, and has been present besides the notary during the giving of your testimony in this case?

JNO. A. & N. O. GREEN AND
H. E. BARNARD,
Solicitors for Complainants.

Endorsed: U. S. circuit court. In ch'cy. No. 9. B. F. Buzard & Moses Hillard, compl's, *vs.* Robert A. Houston, defendant.

251 *Int'y X Int'y to Henry Heath.*

DECEMBER 9, 1882.

We acknowledge service of the within interrogatories, and consent that commission issue at once to take the deposition of the within-named witness in accordance with the agreement this day signed between the solicitors of the complainant and the defendant.

JNO. A. & N. O. GBEEN,
Solicitors for Compl's.

Filed Dec'r 11, 1882.

W. C. ROBARDS, *Cl'k,*
By W. McMASTER, *Dep'ty.*

Copy of Argument.

In U. States Circuit Court for Western District of Texas, at San Antonio. In Chancery.

BENJAMIN F. BUZARD & MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON, Defendant.

In the above-named cause it is agreed by and between the counsel for the complainants and the defendant that all testimony
252 of witnesses desired by either of said parties may be taken and returned in the manner used by the officers provided by the laws of the State of Texas for the taking and returning of depositions in the district court of said State.

This agreement shall in no manner interfear with any other legal mode for taking depositions in the circuit court of the United States.

The above agreement shall authorize the clerk of the court to issue commisions and attach copy of the argreement thereto.

JNO. A. & N. O. GREEN,
Solicitors for Complainants.
HANCOCK & WEST &
WAELDER & UPSON,
Solicitors for Def't.

Endorsed: U. S. circuit c't. In ch'c'y. No. 9. Benj. F. Buzard & Moses Hillard, compl's, *vs.* Robert A. Houston, def't. Argrement in respect to taking testimony. Filed Dec'r 11, '82. W. C. Robards, cl'k, by W. McMaster, dep'ty.

253 In the Circuit Court of the United States for the Western District of Texas, at San Antonio. No. 9. In Chancery.

I, W. C. Robards, clerk of the circuit court of the United States for the western district of Texas, at San Antonio, do hereby certify that the foregoing and attached seven pages of manuscript, numbered in the margin of said pages from one to seven (both inclusive) contain a full, true, and correct copy and transcript of the original direct and cross-interrogatories propounded to Henry Heath, of Red River county, State of Texas, and a true and correct copy of the agreement of counsel in reference to the taking of testimony in the case of Benj. F. Buzard & Moses Hillard *vs.* Robert A. Houston, all of which appears from the records of said court, now in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit court of the United States of America for the western district of Texas, at San Antonio, at my office in said city of San Antonio, this 12th day of December, A. D. 1882.

W. C. ROBARDS,
Cl'k of the U. S. Circuit Court, W. D. T., at San Antonio,
By W. McMASTER, *Dep'ty.*

254 Endorsed: No. 9. In chancery. In U. S. circuit court, western district of Texas. Benj. F. Buzard & Moses Hillard *vs.* Robert A. Houston.

Copy of Direct and Cross-Interrogatories to Henry Heath, of Red River County, and Copy of Agreement of Counsel in reference to taking of Testimony.

STATE OF TEXAS, *Red River Co.:*

I, G. B. Dean, J. P. and *ex-officio* notary public for said county, in compliance with the commission hereto attached, did, on the first day February, 1883, cause Henry Heath, the witness therein named, to appear before me, and said witness having been first by me duly sworn to true answers make to the interrogatories and cross-interrogatories propounded to him as follows, to wit:

To first Int. he answers:

255 My name is Henry Heath; age, 34 years; place of residence, Bennett Sta-, Red River county, Texas; occupation, clerk.

Int. 2nd. I have known Robert A. Houston about 4 years; I have seen Mr. Buzard once; would know him if I was to see him; know nothing of Mr. Hillard.

Int. 3. Lived in the town of Gonzales, in this State—came there 1879, left there in August, 1882.

Int. 4. I heard a conversation between Captain Buzard and R. A. Houston.

Int. 5. I think it was in the month of Nov., 1881; do not remember day of month. The first that attracted my attention to them was a remark made by Mr. Buzard to R. A. Houston, that he had paid his money for something that had no value, and R. A. Houston replied that he was as ignorant of that fact as he (Buzard) was.

Mr. Buzard made some remark which I did not understand. Mr. Houston then remarked, which I supposed to be a reply to Mr. Buzard, that he came down on the train with Mr. L. A. Mosty from Kansas in August, 1881, and he, Mosty, told me that he and R. E. McAnulty were partners; that is what I told you. Buzard then remarked, Yes, you said something of the kind; about that

256 time I was called off in the store, and heard no more of the conversation.

Int. 6th. The conversation occurred at the front northeast corner of my store, in the town of Gonzales, in Gonzales county, Texas; the parties, Mr. Buzard and R. A. Houston, were sitting on a pair of skids; there were three front doors in my store-building, and I was standing in the east front door of the same.

Int. 7. I know nothing else that would benefit either party.

HENRY HEATH.

Cross-int. 1. First he answers: I lived in the town of Gonzales, in Gonzales county, Texas, from 1879 until August, 1882; followed the occupation of grocer merchant and saloon-keeper; I kept house and lived with my family; I never worked for any one but for myself; I never lived with the defendant.

Cross-int. 2. I am now clerking for J. C. Carter, keeping house, and living with my family.

Cross-int. 3. It was my custom when not busy to stand in front of

my house, and the remark of Buzard drew my attention to the conversation. I was standing in my northeast front door about
257 7 or 8 feet from Mess. Buzard and Houston, and they were sitting on a pair of skids at the northeast corner of my store, to my right; they were talking in an ordinary tone of voice; they were not angry with each other.

Cross-int. 4. I was not invited by either of the gentlemen to hear what they had to say; all that I heard I have stated.

Cross-int. 5. I think it was in the month of November, 1881; do not remember the day of month; the first that attracted my attention to them was a remark made by Mr. Buzard to R. A. Houston that he had paid his money for something that had no value, and R. A. Houston replied that he was as ignorant of that fact as he, Buzard, was. Mr. Buzard made some remark which I did not understand. Mr. Houston then remarked, which I supposed to be a reply to Mr. Buzard, that he came down on the train with Mr. L. A. Mosty from Kansas in August, 1881, and he, Mosty, told me that he and R. A. McAnulty were partners; that is what I told you. Buzard then remarked, Yes, you said something of the kind. About that time I was called in the store and heard no more of the conversation.

258 Cross-int. 6. I do not know of any one present during the conversation between Mr. Buzard and R. A. Houston.

Cross-int. 7. At a later hour of the same day that the conversation occurred between Mr. Buzard and R. A. Houston, I met Mr. Houston in the back room of my store in company with several other gentlemen and asked him what was the matter with he and the gentleman that he was talking to outside; he then told me the gentleman's name was Mr. Buzard. I then and there told him that I heard that part of the conversation that I have stated.

Cross-int. 8. I was at my place of business and the conversation I heard was so short and being so close to my business that [it] was impossible for me not to have heard the conversation, and I am not aware of breaking the rules of etiquette whatever.

Cross-int. 9. Mr. Buzard was a stranger to me, and it was none of my business to overhear what he had to say to Mr. Houston, or any one else.

Cross-int. 10. W. A. Sport was the only one that has been present.

HENRY HEATH.

THE STATE OF TEXAS, *Red River County:*

259 I, Geo. B. Dean, J. P. and *ex-officio* notary public in and for said county, do hereby certify that the facts by me stated as aforesaid are true, and that the foregoing answers were by the said witness, Henry Heath, sworn to and subscribed before me.

Given under my hand officially and seal of office in the town of Bennett, in said county, on this the 1st day of February, 1883.

[L. S.] GEO. B. DEAN,

J. P., and ex-officio Notary Public, Red River County, Texas.

260 Sixth. The defendant then offered and read in evidence the deposition of J. H. Stephens, a witness for the defendant, taken by agreement of counsel under the State practice, together with the interrogatories and commission attached thereto, which is as follows:

WESTERN DISTRICT OF TEXAS, *ss:*

In the Circuit Court of the United States for the Western District of Texas, at San Antonio.

BENJ. F. BUZARD *vs.* ROBERT A. HOUSTON.

Suit pending in said court.

The President of the United States to the clerk of the district court or any judge or clerk of the county court or notary public of the county of Gonzales, in the State of Texas, Greeting:

You are hereby authorized and empowered to cause to come before you J. H. Stevens, a resident of the said county of Gonzales, and his answers take to the accompanying interrogatories and cross-interrogatories propounded to him in a certain cause now pending in said U. S. circuit court, wherein Benj. F. Buzard and
261 Moses Hillard, plaintiffs, and Robert A. Houston, defendant, and, having reduced the said answers to the said witness or witnesses to writing, you will—

1st. Cause the same to be subscribed and sworn to by the said witness or witnesses.

2nd. You will certify under your hand and seal of office that said answers were subscribed and sworn to before you.

3d. You will seal up in an envelope the answers so taken, together with the annexed interrogatories and this commission, and endorse your name across the seal.

4th. You will endorse on the said envelope the names of the parties to this suit and the name of said witness or witnesses.

4th. You will direct the package to the clerk of the circuit court of the United States at San Antonio, Texas.

6th. If the package is sent by mail, you will have the postmaster or his deputy to endorse thereon over his official signature that he received it from the hands of the officer taking the same, and in all other respects you will conform to the regulations of the statute in such cases made and provided.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court
262 hereto affixed, at San Antonio, Texas, this 21st day of December, A. D. 1882, and the 107 year of our Independence.

[L. S.] W. C. ROBARDS,
Clerk U. S. Circuit Court.
By W. McMASTER, *Dep'y.*

In the Circuit Court of the United States for the Western District of Texas, sitting at San Antonio. In Chancery.

BUZARD and HILLIARD
vs.
ROBERT A. HOUSTON. } No. 9.

Interrogatories to be propounded to J. H. Stevens, to be found in the county of Gonzales, State of Texas, a witness for the defendant.

Interrogatory No. 1. What is your name, age, occupation, and place of residence?

Interrogatory 2. Do you know the parties to this suit, or any of them? If so, please state which of them you do know.

Interrogatory No. 3. Do you know R. E. McAnulty and L. A. Mosty: if yea, how long have you known them, and did you
263 know them or either of them during the summer and fall of 1881?

Interrogatory 4. What, if anything, do you know of a partnership existing between said McAnulty and said Mosty in the cattle business during the summer and fall of 1881?

Interrogatory 5. If you say in answer to the foregoing that you have knowledge of said partnership, then please state fully all you may know about it, and state also the source from which you derived your information?

Interrogatory No. 6. If you have stated what you know of the said partnership then please state now whether you know anything of a cattle contract between said L. A. Mosty and Robert A. Houston existing in the summer and fall of 1881, and what you know about that contract. State also whatever and what connection that contract had with the partnership of McAnulty and Mosty.

264 Interrogatory No. 7. If you say in answer to the last foregoing interrogatory that the partnership of McAnulty and Mosty had connection with or relation to the cattle contract between Mosty and Houston named in the foregoing interrogatory, then please state now distinctly what that connection or relation was, unless you have already done so, together with your means of information.

Interrogatory 8. In answer to this interrogatory please state any other matter or thing that you may know relative to the subject-matter of these interrogatories which may benefit either party to this suit, as fully as if you had been specifically interrogated thereto.

C. S. WEST AND
WAELDER & UPSON,
Sol. for Def't.

In U. S. Circuit Court for Western District of Texas, at San Antonio.

BENJAMIN F. BUZARD and MOSES HILLIARD, Complainants,
vs.
ROBERT A. HOUSTON, Defendant. } No. 9.

265 Cross-interrogatories propounded by the complainants to J. H. Stevens, a witness for the defendant:

Cross-int. 1. Where do you reside, whether in Goliad or Gonzales county? If you reside in Goliad county, why is your deposition being taken in Gonzales?

Cross-int. 2. What is your full name? Does the H in your name stand for Henry? If yea, state if you are the person called by his acquaintances "Uncle Henry." If you are not the person called "Uncle Henry," state who you are, that we may be able to identify you.

Cross-int'y 3. If in answer to direct interrogatory 3 you say you were acquainted with R. E. McAnulty and L. A. Mosty in the summer of 1881, state where you knew them. What were they doing and what were you doing that you should know them and their private business with each other? What trade did you have with them or either of them? What intimate relations, if any, existed
266 between them or either of them and yours? State where and when this acquaintance was. Name the town or city, house or place in the town, where your acquaintance aforesaid existed.

Cross-int. 4. If in answer to interrogatory 4 propounded by the plaintiff you say there was a partnership between McAnulty and Mosty aforesaid in the cattle business during the summer and fall of 1881, please state whether the contract of partnership aforesaid was not in writing.

Did you see any contract of partnership in writing? If yea, please produce the same or a copy, if you have it, or say where they are to be found.

Cross-int. 5. If you say in answer to direct interrogatories 4 & 5 that you knew anything about a partnership between McAnulty and Mosty in the summer of 1881, state particularly the extent of your knowledge. What was the terms of the partnership; how do you know the terms; did you see any contract of partnership? If you did not, how were you informed, when and where were you
267 when you were informed, what town, place, or house were you at; who was present; was McAnulty present, was Mosty present, and who else were present? State the private conversation or matter that was said and how it came to be said. What was the occasion of the conversation; did you have any interest?

Cross-int'y. 6. If in answer to direct interrogatory No. 6 you say you know anything of a cattle contract between L. A. Mosty and R. A. Houston existing in the summer of 1881, state what you know about it. Did you see it? If yea, state what it was. If you did not see it, who told you about it? Did you have any interest in it? If you did not, how came the person who informed you to tell you? Please state the terms and conditions of the contract between Mosty

and Houston before referred to; give its contents and when and where it was made.

268 Cross-int. 7. If in answer to direct interrogatory 6 and 7 you say that you had knowledge of the contract before spoken of between L. A. Mosty and R. A. Houston in the summer of 1881, and further say it had any connection with the partnership between McAnulty and Mosty, you will be specially particular to locate the time, place, and circumstances under which your knowledge was obtained. If your knowledge is from hearing a conversation, state when it was, where it was, and who was present. How came such information to be brought to you; what interest did you have in the business that you should know anything about the private affairs of Mosty and McAnulty, and Mosty and Houston?

Cross-int'y 8. If there was any conversation or letter by which you ascertained the contract between Mosty and Houston and the connection McAnulty, as a partner of Mosty, had with the contract between Mosty and Houston, please produce the letter, paper, or writing, if you have it, or state where it can be found.

269 If it was in a conversation or oral communication, please state the precise date—year, month, and day—the town, county, city, or place where it occurred; state everybody who was present and heard what was said, and state the conversation or communication as it occurred.

Cross-int. 9. Are you sure that R. E. McAnulty ever made any communication with you or in your presence or hearing about this matter?

If you state he did, state when and where it happened and who was present; state the precise words used, and how it came about that he said anything to you.

Cross-int. 10. Is is not true that what you know about this matter is from conversations you have had with the defendant, R. A. Houston, or with L. A. Mosty? Have you had such communications or conversations with Houston and Mosty more than once? If yea, state the different times you have talked with Mosty and

270 Houston about it and when and where it was.

Cross-int'y. 11. If you say you ever talked with McAnulty about the matter referred to in direct interrogatories 6 & 7, say how many times, when was it, where was it, and who was present at each time.

Be precise as to date, and tell the reason you know you are right about the date. Tell what was said, and all that was said, and tell how it comes that you know so much about the private business of McAnulty and Mosty, and Mosty and Houston.

Cross-int. 12. What kin are you to the defendant; what relationship in the way of business have you now or have you ever had with the defendant; why is it that you go from Goliad, your place of residence, to Gonzales, the place of residence of the defendant, to give your evidence in this case; is this done at the instance of the defendant; at whose house are you stopping, or at whose expense are you staying in Gonzales?

271 Cross-inter. 13. What communications have you had with the defendant in respect to your testimony to be given in this case, and who is and has been present during the giving of your evidence before the notary?

DEC. 21, 1882.

We acknowledge service of the interrogatories in this case, and consent that commission may issue at once to take the depositions of the witness named, to be taken and returned in accordance with agreement on file, copy of which shall accompany same.

JNO. A. & N. O. GREEN,
Sol. for Compl.

Endorsed: No. 9. In chancery. Benj. F. Buzard and Moses Hillard, complainants, against Robert A. Houston, defendant. Interrogatories and cross-interrogatories to witness J. H. Stevens, witness for defendants. Filed Dec. 21, 1882. W. C. Robards, clerk, by W. McMaster, dep'y.

Copy of Agreement in Reference to Taking of Testimony.

272 In U. S. Circuit Court West. Dist. of Texas, at San Antonio.
In Chancery.

BENJAMIN F. BUZARD & MOSES HILLARD, Complainants,
vs.
ROBERT A. HOUSTON. } No. 9.

In the above-named case it is agreed, by and between the counsel for the defendant and the complainants, that all testimony of witnesses desired by either of said parties may be taken and returned in the manner used by the officers provided by the laws of the State of Texas for the taking and returning of depositions in the district court of said State.

This agreement shall in no manner interfere with any other legal mode for taking depositions in the circuit court of the United States.

The above agreement shall authorize the clerk of the court to issue commission and attach a copy of this agreement thereto.

JNO. A. & N. O. GREEN,
Solicitors for Complainants.
HANCOCK & WEST AND
WAELDER & UPSON,
Solicitors for Defendants.

273 Endorsed: U. S. circuit court. In chancery. No. 9. Benj. F. Buzard & Moses Hillard, compl's, *vs.* Robert A. Houston, defendant. Agreement in reference to taking testimony. Filed Dec. 11th, 1882. W. C. Robards, clerk, by W. McMasters, dep'y.

In the Circuit Court of the United States for the Western District of Texas, at San Antonio. No. 9. In Chancery.

I, W. C. Robards, clerk of the circuit court of the United States for the western district of Texas, at San Antonio, do hereby certify that

the foregoing and attached nine pages of manuscript, numbered in the margin of said pages from one to nine (1 to 9), both inclusive, contain a full, true, and correct copy of and transcript of the original interrogatories and cross-interrogatories propounded by the defendant to J. H. Stevens, and also a correct copy of the agreement in reference to taking testimony in the case of Benj. F. Buzard and Moses Hillard *vs.* Robert A. Houston, all of which appears
274 from the records of said court now in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit court of the United States of America for the western district of Texas, at San Antonio, at my office in said city of San Antonio, this 21st day of December, A. D. 1882.

[L. S.] W. C. ROBARDS,
Clerk of the U. S. Circuit Court, W. D. T., at San Antonio,
By W. McMASTER, *Dep.*

Endorsed: No. 9. In chancery. In U. S. circuit court, western district of Texas. Benj. F. Buzard and Moses Hillard *vs.* Robert A. Houston. Copy of direct and cross-inter'y. to J. H. Stevens, of Gonzales county.

BENJ. F. BUZARD and MOSES HILLARD *vs.* ROBERT A. HOUSTON.

Deposition of witness, J. H. Stevens, in the above-styled suit, pending in the circuit court of the United States for the western district of Texas, at San Antonio.

275 Answer 1st. My name is J. H. Stevens; I am fifty-three years of age; am a cattle trader and raiser by occupation; reside in Goliad, Goliad county, Texas.

Answer 2nd. I know all the parties to this suit personally.

Answer 3d. I know them both; I have known Mr. Mosty but a short time; I think I made his acquaintance during the year 1881; have known McAnulty longer, several years; can't state the exact time I made his acquaintance.

Answer 4th. I know nothing of any partnership existing between McAnulty and Mosty in the cattle business during the summer and fall of 1881.

Answer 5th. I have answered this interrogatory fully by stating that I know of no partnership or contract existing between said parties in my 4th answer.

Answer 6th. I know nothing of a contract between McAnulty and Mosty, or between Mosty and Houston, in regard to a partnership as before stated, and all that I do know about this business is
276 as follows: In the storehouse of Wright, Beverly & Co., in Dodge City, Kansas, about the time the contract between Mosty and Houston was said to have been made, R. E. McAnulty said to me, "It is my money that is furnishing those cows, but Bob does not know it." I understood this statement to refer to the contract between Mosty and Houston, because Houston and McAnulty had just had a conversation in reference to that contract, which I heard, and this remark was made just after Robert Houston left the house.

Answer 6th. I have stated everything that I know about a contract between Mosty and Houston in my foregoing answers.

Answer 7th. I have answered fully as I know how to answer in regard to this matter in my answer to direct interrogatory fifth.

Answer 8th. I have stated all that I know fully.

Cross-answer 1st. I reside in Goliad county. I am in Gon-
277 zales county at present for the purpose of attending a meeting of Gonzales Commandery, No. 11, of which I am a member, and I am not likely to be in Goliad soon is the only reason I know of why my depositions are being taken in Gonzales.

Cross-answer 2nd. My name is John Henry Stephens. The H. stands for Henry, and I am the same person usually called by my friends Uncle Henry.

Cross-answer 3d. I knew them in Dodge City. They were known as cattle-men, and Mr. Mosty was then trading in cattle. I was a cattle-man, and was at that time trading in cattle. I made no trades with either of them. No more intimate relations existed between them, or either of them, and myself than generally existed between cattle-men assembled at the headquarters of cattle-men. I knew them in Dodge City, Kansas.

Cross-answer 4th. I have never said there was any partnership between McAnulty and Mosty.

278 Cross-answer 5th. I have never said that there was any contract or partnership between McAnulty and Mosty. The only knowledge I have about the whole matter was stated in my answer to direct fifth interrogatory. The conversation to which I referred occurred in Dodge City, Kansas, in the storehouse of Wright, Beverly & Co. McAnulty and myself were present. Mosty was not present; don't remember who else was present. What was said and how it came to be said has been stated in my answer to direct fifth interrogatory, to which I refer. I had no interest whatever.

Cross-answer 6th. I know nothing of the contract between Mosty and Houston, and had no interest whatever in it.

Answer 7th. I have answered this as fully as I am able to do in my fifth direct answer. I had no interest in it, and did not care to know anything about it.

279 Cross-answer 8th. All the knowledge I have of this matter was received from Mr. McAnulty, and which was set out in my answer to fifth direct interrogatory, & to which I refer; I had no letter or writing from any one; can't state the precise date it occurred in the year 1881, a few days after the contract between Mosty & Houston is said to have been made, in the town of Dodge City, State of Kansas, in the county of Foard, in the storehouse of Wright, Beverly & Co., and I do not remember any one else being present except myself and McAnulty. I have stated the conversation as it occurred in my answer to direct interrogatory fifth.

Cross-answer 9th. I am sure R. E. McAnulty made the statement to me at the time and place as set out in my answer to fifth direct interrogatory. I refer to my answer in answer to fifth direct interrogatory, and to my answer to eighth cross-interrogatory for all

280 that I know about this matter, and the precise words used by McAnulty to me are set out in my answer to fifth direct interrogatory.

Cross-answer 10th. It is not true; I have not had any such conversations with Houston or Mosty at any time concerning the matter.

Cross-answer 11th. I have had but the one conversation with McAnulty, which is fully set out in my answer to fifth direct interrogatory, and it occurred at the time and place set out in my answer to cross-inter'y 8th. I know that it occurred shortly after the contract between Mosty and Houston, as they were speaking of that business.

Cross-answer 12th. I am no relation whatever; I have no business relations with the defendant at present. I bought cattle from him in 1881, at Caldwell, Kansas; I have answered why I came to Gonzales to answer the depositions in my answer to cross-inter-
281 rogatory 1st; I am not here at the instance of the defendant; I am stopping at the residence of my relation, L. H. Plank, Esq., at my own expense.

Cross-answer 13th. I have had no communication with the defendant, except to tell him what I would testify in the case. James F. Miller, W. B. Sayers, J. T. Matthew, W. J. Bright, John Carson and Charles Braches, Jack Hodges and perhaps others, whose name I do not recollect.

J. H. STEPHENS.

THE STATE OF TEXAS, *Gonzales County:*

Thos. H. Spooner, notary public in and for said State and county, hereby certify that the foregoing pages, numbered from one to 6th, inclusive, contains the true and correct answers as made by the witness, J. H. Stephens, in answer to direct and cross-interrogatories propounded to him in cause styled Benj. F. Buzard and Moses Hillard *vs.* Robert A. Houston, pending in the circuit court of the
282 United States for the western district of Texas, at San Antonio, and that said answers were subscribed and sworn to before me by the said witness, J. H. Stephens.

To which I certify, under my hand and official seal, at office, in Gonzales, this 23d day of December, A. D. 1882.

[L. S.] THOS. A. SPOONER,
N. P., G. C.

283 EXHIBIT A. Referred to in def't's Houston's further answer, page 67, & in D. W. Hinkle's dep., page 163.

SAN ANTONIO, TEXAS, *Oct. 14th*, 1881.

Received this day of B. F. Buzard five hundred dollars in part payment for fifteen hundred head of cattle, cows & bulls, to be contracted for next Tuesday, on which Mr. Buzard agrees to advance 50% of the price, which is to be fifteen dollars and fifty cents per head.

R. A. Houston agrees to make the contract at the time specified, cattle to be delivered at Lampasas, Texas, between the first and the 10th of May, 1882.

If the cattle are not delivered R. A. Houston agrees to forfeit to B. F. Buzard fifteen hundred dollars if the contract is not filled. B. F. Buzard binds himself to take two thousand cows at the same figures, and to forfeit fifteen hundred dollars if he fails to comply with the contract.

R. A. HOUSTON.
B. F. BUZARD.

Witness:
D. W. HINKLE.
J. H. PRESNALL.

Endorsed: Ch. No. 9. In U. S. c. c't. Buzard & Hillard *vs.* R. A. Houston. Exhibit A. Filed August 4, 1882. W. C. Robards, clerk, p'r D. Beall, dep'y.

284 Ex. A, Buzard Dep., before examiner. See page 131. Referred to in Buzard deposition, page 131.

Dodge City, Ford Co., Kansas, *Aug.* 13, 1881.

Contract entered into this day at Dodge City, Kansas, by and between L. A. Mosty, party of the first part, and R. A. Houston, party of the second part, to wit, that L. A. Mosty, party of the first part, hereby agrees to see and deliver unto R. A. Houston, party of the second part, fifteen hundred dry cows, at fourteen dollars per head; same to be good, smooth, and merchantable cows, and to range from (3) three to (8) eight years old. And furthermore, L. A. Mosty, party, party of the first part, agrees to brand said cows with road brand of R. A. Houston, party of the second part, and to deliver said cows at a point 6 miles west of Lampasas, Texas; also L. A. Mosty agrees to deliver and sell to R. A. Houston fifty (50) bulls, at ($14.00) fourteen dollars each, said bulls to be from three (3) to (5) five years old, straight and smooth. L. A. Mosty, party of the first part, hereby acknowledges the receipt of fifteen hundred ($1,500) dollars from R. A. Houston, party of the second part, as part payment on herein mentioned cattle.

Furthermore, R. A. Houston, party of the second part,
285 hereby agrees to honor the drafts which may be drawn by L. A. Mosty, party of the first part, to the amount of thirteen thousand five hundred ($13,500) dollars, interest to be computed at the rate of ten per cent. per annum. L. A. Mosty, party of the first part, hereby agrees to deliver said cattle between the first and fifteenth day of May, 1882.

It is further agreed that the balance due on said cattle shall be paid upon their delivery.

In case of failure of L. A. Mosty, party of the first part, to comply with the above conditions and agreement between him and R. A. Houston, L. A. Mosty hereby agrees to forfeit the sum of fifteen hundred ($1,500) dollars, same to be paid over to R. A. Houston, party of the second part.

L. A. MOSTY.
R. A. HOUSTON.

Witness:
J. W. ORMOND.
R. M. WRIGHT.

STATE OF TEXAS, *County of Bexar:*

Know all men by these presents, that I, Robert A. Houston, party of the 2nd part to above and foregoing contract, for and in consideration of the sum of fifteen thousand dollars, to me in hand paid by Buzard & Hillard, (being the sum advanced by myself,
286 R. A. Houston, in payment on the said contract,) and the further sum of $1,837.50, eighteen hundred and thirty-seven dollars and fifty cents, due upon completion of the foregoing contract, do this day transfer and assign unto said Buzard and Hillard all the right, title, and interest which I have by virtue of said foregoing contract, it being understood that no responsibility shall rest upon me in the event the L. A. Mosty, party of 1st part in said contract, fails to comply in any respect with the terms thereof.

In witness hereof, I hereunto sign my name, this 1st day of November, A. D. 1881.

R. A. HOUSTON.

Witnessed by—
F. G. SMITH.
J. F. LACOSTE.

Duplicate witnessed by R. E. McAnulty, E. C. Colley, J. W. Ormond (in pencil.)

Endorsed: Exhibit A. George Paschal, examiner.

287 Exhibit- B & C referred to in Buzard's deposition, pg. 131.

EXHIBIT B.

DENISON, TEXAS, *Aug.* 19, 1881.

Received of R. A. Houston five thousand dollars ($5,000.00) on contract August 13, 1881.

L. A. MOSTY.

Exhibit "B." GEO. PASCHAL, *Examiner.*

EXHIBIT C.

DALLAS, TEXAS, *Sept.* 28, 1881.

Robert A. Houston, Esq., Gonzales, Texas.

DEAR SIR: I have this day drawn on you through Ball, Hutchings & Co. for eighty-five hundred dollars, same to apply on our contract for cattle to be delivered.

Hope this may not inconvenience you in any way.

Respectfully, L. A. MOSTY.

Lampasas, Texas.

Exhibit "C." GEO. PASCHAL, *Examiner.*

288 The above is all the evidence that was introduced on the hearing of this cause by the complainants and the defendants.

The bill of complaint, the "further answer of the defendant, and plaintiffs'" replication having been previously read to the court.

E. B. TURNER, *Judge.*

Endorsed: No. 9. Benj. F. Buzard *et al. vs.* Rob't. A. Houston. Filed April 9, 1883. W. C. Robards, cl'k.

289 In the Circuit Court of the United States for Western District of Texas, Sitting at San Antonio. March Term, 1883. In Chancery.

BENJAMIN F. BUZARD and MOSES HILLARD
against
ROBERT A. HOUSTON. } No. 9.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, to wit: That the bill of complaint of the complainants be, and the same is hereby, dismissed, and that the complainants pay the defendant his costs of this suit to be taxed.

And thereupon the complainants, in open court, prayed an appeal to the Supreme Court of the United States, which, as prayed, is allowed upon the said complainants giving security for the costs of such appeal in the sum of five hundred dollars, conditioned as required by law.

And thereupon the said complainants tendered their bond for such appeal, with A. E. Carothers and Alonzo Millett as sureties, which being deemed by the court sufficient, the same is approved.

Signed this 9th day of April, 1883, during the March term, 1883.

E. B. TURNER,
U. S. Judge.

290 Endorsed: No. 9. In chancery. Benj. F. Buzard *et al. vs.* Robert A. Houston. Decree. Filed Ap'l 9, 1883. W. C. Robards, clerk.

In the Supreme Court of the United States.

BENJAMIN F. BUZARD and MOSES HILLARD
against
ROBERT A. HOUSTON.

Bond for an appeal in case No. 9, in chancery, in the circuit court of the United States for western district of Texas, at San Antonio.

Know all men by these presents that we, Benjamin F. Buzard, Moses Hillard, A. E. Carothers, and Alonzo Millett, the last-named of San Antonio, Texas, and the first two of St. Louis and St. Joseph, Missouri, are held and firmly bound into Robert A. Houston, of Gonzales, Texas, in the sum of five hundred dollars, to be paid to the said Robert A. Houston, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and
291 each of us, jointly and severally, and our, and each of our, heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, dated this 2d day April, 1883.

Whereas the above-named Benjamin F. Buzard and Moses Hillard hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the circuit court of the United States for the western district of Texas, at San Antonio; now, therefore, the condition of this obligation is such that if the above-named Benjamin F. Buzard and Moses Hillard shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their bill, then this obligation shall be void; otherwise to remain in full force and virtue.

BENJ. F. BUZARD,
By H. E. BARNARD, *Att'y.* [SEAL.]
MOSES HILLARD, [SEAL.]
By H. E. BARNARD, *Att'y.*
A. E. CAROTHERS. [SEAL.]
A. MILLETT. [SEAL.]

Sealed and delivered in presence of—
G. A. SEARIGHT.

Ap'l 9, the foregoing bond approved.

E. B. TURNER,
U. S. Judge.

Endorsed: No. 9. Bond. In Supreme Court of U. S. Benj. F. Buzard *et al. vs.* Robert A. Houston. Appeal bond. Filed Ap'l 9, 1883. W. C. Robards, cl'k.

292 In the Circuit Court of the United States for the Western District of Texas, at San Antonio. No. 9.

I, W. C. Robards, clerk of the circuit court of the United States for the western district of Texas, at San Antonio, do hereby certify that the foregoing and attached two hundred and ninety-one (291) pages of manuscript, numbered in the margin of said pages from one (1) to two hundred and ninety-one (291), both inclusive, contain a full, true, and correct copy and transcript of the original record and all proceedings had in the case of Benjamin F. Buzard & Moses Hillard *vs.* Robert A. Houston, all of which appears from the records of said court, now in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the circuit court of the United States of America for the western district of Texas, at San Antonio, at my office, in said city of San Antonio, this 27th day of July, A. D. 1883.

[SEAL.] W. C. ROBARDS,
Clerk of the U. S. Circuit Court, W. D. T., at San Antonio.

[Endorsed:] No. 9. In U. S. cir't court, western district of Texas. B. F. Buzard *et al. vs.* Rob't A. Houston. Copy of record & all proceedings.

Endorsed on cover: W. Texas C. C. U. S. No. 556. Benjamin F. Buzard and Moses Hillard, appellants, *vs.* Robert A. Houston. Filed 27th August, 1883.